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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 70, No. 250

Friday, December 30, 2005

Agriculture Department
See Forest Service

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77396–77398
Grants and cooperative agreements; availability, etc.:
Pertussis diagnostic tools; research, development, and evaluation, 77398
Meetings:
National Center for Environmental Health/Agency for Toxic Substances and Disease Registry—
Scientific Counselors Board, 77398–77399
National Institute for Occupational Safety and Health—
Occupational exposure to titanium dioxide; health hazard evaluation and recommendations, 77399–77400
Radiation and Worker Health Advisory Board, 77399

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77400–77401

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration

Energy Department
See Federal Energy Regulatory Commission
See National Nuclear Security Administration

Environmental Protection Agency
RULES
Air programs:
Fuel and fuel additives—
Renewable Fuel Program; 2006 default standard, 77325–77336
PROPOSED RULES
Air programs:
Fuel and fuel additives—
Renewable Fuel Program; 2006 default standard, 77351–77363
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Hexythiazox, 77363–77371
NOTICES
Environmental statements; availability, etc.:
Agency comment availability, 77380
Agency weekly receipts, 77380–77381
Meetings:
Ozone Transport Commission, 77381–77382
Pesticide, food, and feed additive petitions:
Dow AgroSciences LLC, 77389–77390
Pesticide programs:
Risk assessments—
Metaldehyde, 77382–77384
Pesticide registration, cancellation, etc.:
Erioglaucine and tartrazine aquashade, 77384–77387
Ferbam, 77387–77389
Superfund; response and remedial actions, proposed settlements, etc.:
PM Northwest Site, WA, 77391
Toxic and hazardous substances control:
New chemicals; receipt and status information, 77391–77395

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 77301–77303, 77307–77310
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 77303–77307
Rolls-Royce Deutschland, 77299–77301
Turbomeca S.A., 77310–77312
Airworthiness standards:
Special conditions—
Garmin International, Inc.; GFC-700 AFCS on Mooney M20M and M20R airplanes, 77297–77299
Transport category airplanes—
Thermal/acoustic insulation materials; improved flammability standards, 77748–77752
PROPOSED RULES
Airworthiness directives:
Pratt & Whitney, 77342–77345
NOTICES
Aeronautical land-use assurance; waivers:
Jackson County-Reynolds Field, MI, 77442–77443
Rickenbacher International Airport, OH, 77443–77444
Passenger facility charges; applications, etc.:
Waterloo Municipal Airport, IA, et al., 77444–77446

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77422

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Public utilities including regional transmission organizations; accounting and financial reporting requirements, 77626–77661

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Woodbury County, IA, 77446
Safe, Accountable, Flexible, Efficient Transportation Equity Act; implementation:
Highways for LIFE Pilot Program, 77446–77450

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 77395

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 77395

Federal Trade Commission
RULES
Hart-Scott-Rodino Antitrust Improvements Act:
Premerger notification; reporting and waiting period requirements, 77312–77319

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77401–77405

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Mississippi, 77374–77375
Ohio, 77376
DEMAG Plastics Group; manufacturing and warehousing facilities, 77375
Puerto Rico, 77376–77377
Rhode Island—
Southeastern New England Shipbuilding Corp.; shipbuilding and repair activity, 77377
Vermont, 77377–77378

Forest Service
NOTICES
Environmental statements; notice of intent:
Idaho Panhandle National Forests, ID, 77372–77373
Land and resource management plans, etc.:
Cimarron and Comanche National Grasslands, CO, 77373–77374
Meetings:
Resource Advisory Committees—
Yakutat, 77374
Recreation fee areas:
Kootenai National Forest, Mt; Bull River Pavilion, 77374

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
NOTICES
Meetings:
Medicaid Commission, 77395–77396

Homeland Security Department
See Federal Emergency Management Agency

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Students of higher education; assisted housing eligibility, 77742–77745
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77422–77423
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 77423

Indian Affairs Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77423–77424

Indian Health Service
NOTICES
Privacy Act; systems of records, 77405–77412

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Fresh and chilled atlantic salmon from—
Norway, 77378
Stainless steel plate in coils from—
Belgium, 77378–77379

Labor Department
See Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77427

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Steens Mountain Advisory Council, 77424
Meetings:
Resource Advisory Councils—
Utah, 77424–77425

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf operations:
Alternate energy-related uses, 77345–77348

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground mines—
Low- and medium-voltage diesel-powered electrical generators, 77728–77739
Education and training:
Shaft and slope construction mine workers; training standards, 77716–77728
NOTICES
Mining products; testing, evaluation, and approval; user fee adjustments, 77427–77428

National Highway Traffic Safety Administration
RULES
Anthropomorphic test devices:
Occupant crash protection—
Hybrid III six-year-old weighted child test dummy, 77336–77341
Motor vehicle safety standards:
Occupant crash protection—
Occupant Protection Incentive Grant Program criteria; technical amendments, 77320–77321
PROPOSED RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Miscellaneous amendments, 77454–77599
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
US SPECS, 77450–77451

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 77412–77414
Meetings:
National Cancer Institute, 77414
National Center for Complementary and Alternative Medicine, 77414
National Eye Institute, 77414–77415
National Institute of Environmental Health Sciences, 77417
National Institute of General Medical Sciences, 77416–77417
National Institute of Mental Health, 77417
National Institute on Aging, 77416
National Institute on Alcohol Abuse and Alcoholism, 77415
National Institute on Drug Abuse, 77415–77416
National Library of Medicine, 77417–77418
Scientific Review Center, 77418
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Hope Pharmaceuticals, 77418–77419
Litmus, LLC, 77419–77420
Lux Biosciences, 77420–77421
Protox Therapeutics, Inc., 77421

National Nuclear Security Administration
NOTICES
Environmental statements; notice of intent:
Los Alamos National Laboratory, NM; Biosafety Level 3 Facility, 77379–77380

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Duke Energy Corp, 77428–77431
Interstate Power & Light Co. et al, 77431–77432

Postal Service
NOTICES
Meetings; Sunshine Act, 77432

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77432–77433

Reclamation Bureau
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma, 77348–77351
NOTICES
Environmental statements; availability, etc.:
Red River Valley Water Supply Project, ND, 77425–77427

Securities and Exchange Commission
PROPOSED RULES
Securities:
Foreign private issuer's termination of registration, 77688–77713
NOTICES
Public Company Accounting Oversight Board:
Reporting on whether previously reported material weakness continues to exist; auditing standard requirements, 77602–77623
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 77433–77435
Philadelphia Stock Exchange, Inc., 77435–77438

Social Security Administration
RULES
Social security benefits:
Medicare subsidies; Medicare Part D Program, 77664–77685
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77438–77440

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 77440–77441
Nonproliferation measures imposition:
Various foreign entities, 77441–77442
Organization, functions, and authority delegations:
Undersecretary for Political Affairs, 77442

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
West Virginia, 77321–77325

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Colorado, Kansas & Pacific Railway Co., 77451–77452

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 77442

Separate Parts In This Issue

Part II
Transportation Department, National Highway Traffic Safety Administration, 77454–77599

Part III
Securities and Exchange Commission, 77602–77623

Part IV
Energy Department, Federal Energy Regulatory Commission, 77626–77661

Part V
Social Security Administration, 77664–77685

Part VI
Securities and Exchange Commission, 77688–77713

Part VII
Labor Department, Mine Safety and Health Administration, 77716–77739

Part VIII
Housing and Urban Development Department, 77742–77745

Part IX
Transportation Department, Federal Aviation Administration, 77748–77752

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

14 CFR
23.....77297
39 (5 documents) 77299, 77301, 77303, 77307, 77310
91.....77748
121.....77748
125.....77748
135.....77748
Proposed Rules:
39.....77342

16 CFR
801.....77312
803.....77312

17 CFR
Proposed Rules:
200.....77688
232.....77688
240.....77688
249.....77688

18 CFR
101.....77626

20 CFR
418.....77664

23 CFR
1345.....77320

24 CFR
5.....77742
880.....77742
883.....77742
884.....77742
886.....77742
891.....77742
982.....77742

30 CFR
48.....77716
75.....77728
948.....77321
Proposed Rules:
285.....77345
936.....77348

40 CFR
80.....77325
Proposed Rules:
80.....77351
180.....77363

49 CFR
572.....77336
Proposed Rules:
571.....77454

Rules and Regulations

Federal Register
Vol. 70, No. 250
Friday, December 30, 2005

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE237, Special Condition 23–177–SC]

Special Conditions; Garmin International, Inc., GFC–700 AFCS on the Mooney M20M and M20R With the G1000 EFIS; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Garmin International, Inc., 1200 E 151st St., Olathe, KS 66062, for a Supplemental Type Certificate for the Mooney M20M and M20R. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of a digital autopilot, Model GFC–700, manufactured by Garmin International, Inc., for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). This system will interface to the G1000 EFIS, which is also covered by these special conditions, which contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is December 21, 2005. Comments must be received on or before January 30, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE237, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE237. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE237.'' The postcard will be date stamped and returned to the commenter.

Background

On November 1, 2005, Garmin International, Inc., 1200 E 151st St., Olathe, KS 66062, made an application to the FAA for a new Supplemental Type Certificate for the Mooney M20M and M20R. The Mooney M20M and M20R are currently approved under TC No. 2A3. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of a digital autopilot that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Garmin International, Inc. must show that the Mooney M20M and M20R meet their original certification basis, as listed on Type Data Sheet 2A3, the additional certification requirements added for the GGFC–700 system, exemptions, if any; and the special conditions adopted by this rulemaking action. The additional certification requirements for the GFC–700 system and G1000 include 23.1301, 23.1309, 23.1311, 23.1322, 23.1353 and other rules at the amendment appropriate for the date of application. Further details of the certification basis for the installation of the GFC–700 autopilot and G1000 EFIS are available on request.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Garmin International, Inc., plans to incorporate certain novel and unusual design features into the Mooney M20M and M20R for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an autopilot, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions, whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Mooney M20M and M20R. Should Garmin

International, Inc., apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Mooney M20M and M20R airplanes modified by Garmin International, Inc., to add the GFC–700 autopilot system.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on December 21, 2005.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24668 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–02–AD; Amendment 39–14439; AD 2005–26–18]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland (Formerly Rolls-Royce plc) Models Tay 650–15 and 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce Deutschland (formerly Rolls-Royce plc) (RRD) models Tay 650–15 and 651–54 turbofan engines. That AD currently requires borescope inspection of the high pressure compressor (HPC) stage 12 disc assembly to detect damage caused by HPC outlet guide vane (OGV) retaining bolt failure, and replacement of unserviceable parts with serviceable parts. That AD also requires as terminating action, the incorporation of a new design retention arrangement for the HPC OGV to prevent HPC OGV retaining bolt failure. This ad requires the same actions but extends the terminating action compliance time for Tay 650–15 engines. This AD also includes references to later revisions of two of the applicable RRD service bulletins (SBs). This AD results from RRD relaxing the terminating action compliance time for Tay 650–15 engines due to reassessment by RRD. We are issuing this AD to prevent an uncontained failure of the HPC stage 11/12 disc spacer, which could result in damage to the airplane.

DATES: This AD becomes effective February 3, 2006. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of February 15, 2002 (67 FR 4652, January 31, 2002).

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany, telephone: 011 49 (0) 33–7086–1768, fax: 011 49 (0) 33–7086–3356.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to RRD models Tay 650–15 and 651–54 turbofan engines. We published the proposed AD in the **Federal Register** on July 25, 2005 (70 FR 42515). That action proposed to require the same actions as AD 2002–01–29 but extends the terminating action compliance time for Tay 650–15 engines.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

There are about 400 Tay 650–15 and 651–54 turbofan engines of the affected design in the worldwide fleet. We estimate that 105 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will

take about 3 work hours per engine to perform the proposed borescope inspection, and that the average labor rate is $65 per work hour. Required parts will cost about $3,200 per engine. We estimate that one third of the engines will have the parts replaced at time of engine overhaul. We also estimate that one third of the engines will have the parts replaced during an engine mid-life shop visit. We also estimate that one third of the engines will have the parts replaced at an engine shop visit dedicated for these parts replacements, at a cost of about $90,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $3,600,000.

Special Flight Permits Paragraph Removed

Paragraph (f) of the current AD, AD 2002–01–29, contains a paragraph pertaining to special flight permits. Even though this AD does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2001–NE–02–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 Amendment 39–12624 (67 FR 4652, January 31, 2002) and by adding a new airworthiness directive, Amendment 39–14439, to read as follows:

2005–26–18 Rolls-Royce Deutschland (formerly Rolls-Royce plc): Amendment 39–14439. Docket No. 2001–NE–02–AD.

Effective Date

(a) This AD becomes effective February 3, 2006.

Affected ADs

(b) This AD supersedes AD 2002–01–29.

(c) This AD applies to Rolls-Royce Deutschland (formerly Rolls-Royce plc) (RRD) models Tay 650–15 and 651–54 turbofan engines with high pressure compressor (HPC) outlet guide vane (OGV) retaining bolts part numbers (P/Ns) BLT3602, DU909, and DU818 installed. These engines are installed on, but not limited to Boeing 727 and Fokker F.28 Mark 0100 airplanes.

Unsafe Condition

(d) This AD results from RRD relaxing the terminating action compliance time for Tay 650–15 engines due to reassessment by RRD. We are issuing this AD to prevent an uncontained failure of the HPC stage 11/12 disc spacer, which could result in damage to the airplane.

Compliance

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

Initial Inspection

(f) Perform a borescope inspection of the rear side of the stage 12 rotor disc at or before accumulating 8,000 cycles-since-new on the OGV retaining bolts, or within 30 days from the effective date of this AD, whichever occurs later. Use paragraph 3.A.(1) of the Accomplishment Instructions of RRD Mandatory Service Bulletin (MSB) Tay–72–1483, Revision 2, dated October 20, 2000, to do the inspection. If damage is observed on the stage 12 rotor disc, remove the engine from service.

Repetitive Inspections

(g) Thereafter, perform repetitive borescope inspections of the rear side of the stage 12 rotor disc no earlier than 1,800 and no later than 2,200 cycles-since-last-inspection, or no later than 18 months since-last-inspection, whichever occurs first. Use paragraph 3.A.(1) of the Accomplishment Instructions of RRD MSB Tay–72–1483, Revision 2, dated October 20, 2000, to do the inspections. If damage is observed on the stage 12 rotor disc, remove the engine from service.

OGV Retaining Bolt Replacement

(h) For engines that had OGV bolts replaced with new bolts P/Ns BLT3602, DU909, and DU818 as specified in RRD SB Tay–72–1484, dated November 15, 1999, or Revision 1, dated December 17, 1999, the initial and repetitive inspection requirements, based on engine cycles-since-bolt installation, are the same as specified in paragraphs (f) and (g) of this AD.

Terminating Action

(i) As terminating action for the inspections required by this AD, do the following:

(1) Before November 1, 2007, for Tay 650–15 engines, and before October 1, 2012, for Tay 651–54 engines, remove from service the parts listed in the following Table 1:

TABLE 1.—PARTS TO BE REMOVED FROM SERVICE

Part No.	Part name
JR12314A	HPT Rotor Inner Seal Support Assembly.
EU57842A	HP Compressor Outlet Guide Vane 5-Span.

TABLE 1.—PARTS TO BE REMOVED FROM SERVICE—Continued

Part No.	Part name
EU57843A	HP Compressor Outlet Guide Vane 6-Span.
JR30962A	HP Rotor Thrust Bearing Housing Assembly.
JR30568A	Diffuser Case Assembly.
KB7106	Tab Washer.
EU12042	Retaining Lock Plate.
DU818	Hex Head Bolt.

(2) Information on removing these parts from service can be found in RRD MSB Tay–72–1498, dated October 20, 2000, or RRD MSB Tay–72–1498, Revision 1, dated December 1, 2000, or RRD SB Tay–72–1498, Revision 2, dated December 31, 2004.

(j) After performing the actions specified in paragraph (i) of this AD, the inspections specified in paragraphs (f) through (h) of this AD are no longer required.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) Luftfhart Bundesamt airworthiness directive D–2004–365, dated January 31, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Rolls-Royce Mandatory Service Bulletin Tay–72–1483, Revision 2, dated October 20, 2000, to perform the inspections required by this AD. The Director of the **Federal Register** previously approved the incorporation by reference of this service bulletin as of February 15, 2002 (67 FR 4652, January 31, 2002), in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany, telephone: 011 49 (0) 33–7086–1768, fax: 011 49 (0) 33–7086–3356. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on December 23, 2005.

Carlos Pestana,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–24642 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21611; Directorate Identifier 2004–NM–234–AD; Amendment 39–14438; AD 2005–26–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300–600, A310–200, and A310–300 series airplanes. This AD requires inspecting for certain serial numbers on elevators, and doing a detailed inspection, visual inspection with a low-angle light, and tap-test inspection of the upper and lower surfaces of the external skins on certain identified elevators for any damage (i.e., debonding of the graphite fiber reinforced plastic/Tedlar film protection, bulges, debonding of the honeycomb core to the carbon fiber reinforced plastic, abnormal surface reflections, and torn-out plies), and doing corrective actions if necessary. This AD results from reports of debonded skins on the elevators. We are issuing this AD to detect and correct debonding of the skins on the elevators, which could cause reduced structural integrity of an elevator and reduced controllability of the airplane.

DATES: This AD becomes effective February 3, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 3, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes; Model A300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310 series airplanes. That NPRM was published in the **Federal Register** on June 22, 2005 (70 FR 36073). That NPRM proposed to require inspecting for certain serial numbers on elevators, and doing a detailed inspection, visual inspection with a low-angle light, and tap-test inspection of the upper and lower surfaces of the external skins on certain identified elevators for any damage (i.e., debonding of the graphite fiber reinforced plastic/Tedlar film protection, bulges, debonding of the honeycomb core to the carbon fiber reinforced plastic, abnormal surface reflections, and torn-out plies), and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

Request To Clarify Applicability

The commenter, the airplane manufacturer, requests that we clarify the applicability statement of the proposed AD. The proposed AD states that the AD would apply to affected models ''equipped with carbon fiber elevators having part number (P/N) A55276055000 (left-hand side) or P/N A55276056000 (right-hand side).'' The commenter notes that the related French airworthiness directive states that it is effective for affected models ''equipped with carbon fiber elevators P/N A55276055000 (left-hand side) and P/N A55276056000 (right-hand side), installed as per modification 4805, * * *.'' The commenter asks that we

revise the applicability statement of the proposed AD to indicate that an affected airplane would be equipped with both the left- and right-hand side P/Ns, and that the proposed AD only applies to airplanes with these P/Ns installed in accordance with (Airbus) Modification 4805.

We partially agree with the commenter's request.

After the comment period closed, we coordinated with the commenter to gain a better understanding of its comments. This coordination resulted in agreement between the FAA and the commenter that, because carbon fiber elevators are interchangeable among any airplanes with Airbus Modification 4805, it is more appropriate for this AD to apply to affected models ''equipped with carbon fiber elevators P/N A55276055000 (left-hand side) or P/N A55276056000 (right-hand side),'' as specified in the NPRM. (The commenter requests that we disregard its former objection concerning the use of ''or'' instead of ''and.'') Thus, no change is needed in this regard.

Regarding the commenter's other request, we agree to revise the applicability statement to clarify that carbon fiber elevators with the affected P/Ns were installed under Airbus Modification 4805.

Explanation of Additional Change to Applicability

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Costs of Compliance

This AD will affect about 172 airplanes of U.S. registry.

The inspection for the serial number will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this action for U.S. operators is $11,180, or $65 per airplane.

The detailed inspection, visual inspection with a low-angle light, and tap-test inspection of the elevator will take about 3 work hours per elevator (two elevators per airplane), at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this action for U.S. operators is $67,080, or $390 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2005–26–17 Airbus: Amendment 39–14438. Docket No. FAA–2005–21611; Directorate Identifier 2004–NM–234–AD.

Effective Date

(a) This AD becomes effective February 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R, and F4–622R airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category; equipped with carbon fiber elevators having part number (P/N) A55276055000 (left-hand side) or P/N A55276056000 (right-hand side), installed under Airbus Modification 04805.

Unsafe Condition

(d) This AD results from reports of debonded skins on the elevators. The FAA is issuing this AD to detect and correct debonding of the skins on the elevators, which could cause reduced structural integrity of an elevator and reduced controllability of the airplane.

Compliance

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

Inspection for Serial Number, Repetitive Inspections, and Corrective Actions

(f) Within 600 flight hours after the effective date of this AD, inspect to

determine if the serial number (S/N) of the elevator is listed in Airbus All Operators Telex (AOT) A300–600–55A6032, dated June 23, 2004 (for Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R Variant F, F4–605R, and F4–622R airplanes); or in Airbus AOT A310–55A2033, dated June 23, 2004 (for Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes).

(1) If the S/N does not match any S/N on either AOT S/N list, no further action is required by this paragraph.

(2) If the S/N matches a S/N listed in an AOT, before further flight, do the actions listed in Table 1 of this AD, and any corrective action as applicable, in accordance with Airbus AOT A300–600–55A6032, dated June 23, 2004; or Airbus AOT A310–55A2033, dated June 23, 2004; as applicable. Repeat the inspections at intervals not to exceed 600 flight hours. Do applicable corrective actions before further flight.

TABLE 1.—REPETITIVE INSPECTIONS

Do a—	Of the—	For any—
Detailed inspection	Elevator upper and lower external skin surfaces	Damage (i.e., breaks in the graphite fiber reinforced plastic (GFRP)/Tedlar film protection, debonded GFRP/Tedlar film protection, bulges, torn-out plies).
Visual inspection with a low-angle light.	Elevator upper and lower external skin surfaces	Differences in the surface reflection.
Tap-test inspection	Upper and lower external skin surfaces of the honeycomb core panels in the elevator.	Honeycomb core that has debonded from the carbon fiber reinforced plastic (CFRP).

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

Repair Approval

(g) Where the AOT says to contact the manufacturer for repair instructions, or an alternative inspection method: Before further flight, repair or do the alternative inspection method according to a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

Parts Installation

(h) As of the effective date of this AD, no carbon fiber elevator having part number (P/N) A55276055000 (left-hand side) or P/N A55276056000 (right-hand side) may be installed on any airplane unless it is inspected according to paragraph (f) of this AD.

No Reporting Required

(i) Although the AOTs referenced in this AD specify to submit inspection reports to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) French airworthiness directive F–2004–131, dated August 4, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus All Operators Telex A300–600–55A6032, dated June 23, 2004; or Airbus All Operators Telex A310–55A2033, dated June 23, 2004; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. (The document number and date are only included on the first page of these documents.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 15, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24531 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–89–AD; Amendment 39–14436; AD 2005–26–15]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, that requires performing repetitive inspections for cracks, ruptures, or bends in certain components of the elevator control system; replacing discrepant components; and, for certain airplanes, installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. The AD also requires eventual modification of the elevator gust lock system to replace the mechanical system with an electromechanical system, which will terminate the repetitive inspections. The actions specified by this AD are intended to prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 3, 2006.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 2006.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 21, 2005 (70 FR 55310). That action proposed to require performing repetitive inspections for cracks, ruptures, or bends in certain components of the elevator control system; replacing discrepant components; and, for certain airplanes, installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. The proposed AD also would have required eventual modification of the elevator gust lock system to replace the mechanical system with an electromechanical system, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments to the proposed AD were received.

Correction to Final Rule

In paragraph (c)(2) of the supplemental NPRM we inadvertently used an incorrect date for EMBRAER Service Bulletin 145–27–0086, Change 04, dated March 21, 2005, and have corrected the date accordingly in the final rule.

Clarification of Appropriate Service Information

We have revised paragraphs (c)(1)(i) and (c)(1)(ii) of this AD to clarify that the actions required by those paragraphs must be done in accordance with EMBRAER Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Change to Applicability

We specify model designations in the applicability of this proposed AD as those designations are published in the most recent type certificate data sheet for the affected models. These model designations differ in the referenced service bulletin(s).

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 300 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane, per inspection cycle, to accomplish the inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $19,500, or $65 per airplane, per inspection cycle.

We estimate that 108 airplanes of U.S. registry will be subject to EMBRAER Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005. For these airplanes, it will take up to 65 work hours to accomplish the modification in that service bulletin, at an average labor rate of $65 per work hour. Required parts will cost up to $14,000 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be up to $1,968,300, or $18,225 per airplane.

We estimate that 192 airplanes of U.S. registry will be subject to EMBRAER Service Bulletin 145–27–0086, Change 04, dated March 21, 2005. For these airplanes, it will take approximately 133 work hours to accomplish the modification in that service bulletin, at an average labor rate of $65 per work hour. Required parts will cost up to $23,164 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be up to $6,107,328, or $31,809 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005–26–15 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14436. Docket 2002–NM–89–AD.

Applicability: Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category; serial numbers 145001 through 145189 inclusive, 145191 through 145362 inclusive, 145364 through 145373 inclusive, 145375, 145377 through 145411 inclusive, 145413 through 145424 inclusive, 145426 through 145430 inclusive, 145434 through 145436 inclusive, 145440 through 145445 inclusive, 145448, 145450, and 145801; equipped with a mechanical gust lock system, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Within 800 flight hours after the effective date of this AD, do a detailed inspection of the elevator control system for any crack, rupture, or bend in any component, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0087, Change 03, dated September 27, 2002. Where this service bulletin specifies to return discrepant parts and report inspection results to the manufacturer, this AD does not require these actions. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours or 15 months, whichever is first.

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

Replacement of Discrepant Parts

(b) If any discrepant part is found during any inspection required by paragraph (a) of this AD, before further flight, replace the discrepant part with a new part, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0087, Change 03, dated September 27, 2002.

Modification

(c) Within 10,000 flight hours or 60 months after the effective date of this AD, whichever is first, modify the elevator gust lock by accomplishing paragraph (c)(1) or (c)(2) of this AD, as applicable. This modification terminates the repetitive inspections required by paragraph (a) of this AD.

(1) For airplanes listed in EMBRAER Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005: Do paragraph (c)(1)(i) or (c)(1)(ii) of this AD, as applicable, and install a new spring cartridge and implement new logic for the electromechanical gust lock system by doing all actions in section 3.D. (Part IV) of the Accomplishment Instructions of the service bulletin. After accomplishing the actions in EMBRAER Service Bulletin 145–27–0101; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08; the airplane flight manual (AFM) revision required by AD 2002–26–51, amendment 39–13008, may be removed from the Limitations section of the EMBRAER EMB–145 AFM. Accomplishing the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0102; as specified by EMBRAER Service Bulletin 145–27–0075, Revision 08; terminates the repetitive inspections required by AD 2005–24–11, amendment 39–14391.

(i) Replace the mechanical gust lock system with an electromechanical gust lock system, and replace the control stand with a reworked control stand, by doing all the actions (including a detailed inspection to ensure that certain parts have been removed previously per EMBRAER Service Bulletin 145–27–0076) in and per section 3.A. (Part I) or 3.B. (Part II) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08, as applicable. If the inspection reveals that certain subject parts have not been removed previously, before further flight, remove the subject parts in accordance with EMBRAER Service Bulletin 145–27–0075, Revision 08. Where Parts I and II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08, specify to remove and ''send the control stand to be reworked in a workshop,'' replace the control stand with a control stand reworked as specified in EMBRAER Service Bulletin 145–27–0075, Revision 08.

(ii) Replace the return spring and spring terminal of the gust lock control lever with improved parts by doing all the actions in and per section 3.C. (Part III) of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08.

Note 2: Part IV of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08, refers to EMBRAER Service Bulletin 145–27–0101, currently at Revision 02, dated December 27, 2004; and EMBRAER Service Bulletin 145–27–0102, currently at Revision 02, dated January 20, 2005; as additional sources of instructions for accomplishing the installation of a new spring cartridge and implementation of the new logic for the electromechanical gust lock system.

(2) For airplanes listed in EMBRAER Service Bulletin 145–27–0086, Change 04, dated March 21, 2005: Do paragraphs (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) of this AD, as applicable.

(i) Rework the tail carbon box and the horizontal stabilizer by doing all the actions (including the inspection for delamination) in and per section 3.A. (Part I) of the Accomplishment Instructions of the service bulletin. If any delamination is found that is outside the limits specified in the service bulletin, before further flight, repair per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Departmento de Aviacao Civil (or its delegated agent).

(ii) Install wiring and electrical components by doing all the actions in and per section 3.B. (Part II) of the Accomplishment Instructions of the service bulletin.

(iii) Install and activate the electromechanical gust lock system by doing all actions in section 3.D. (Part IV) of the Accomplishment Instructions of the service bulletin. Where Part IV of the Accomplishment Instructions of the service bulletin specifies to remove and ''send the control stand to be reworked in a workshop,'' replace the control stand with a control stand reworked as specified in Part III of the service bulletin.

(iv) Install a new spring cartridge and implement new logic for the electromechanical gust lock system by doing all actions in section 3.E. (Part V) of the Accomplishment Instructions of the service bulletin, as applicable. After accomplishing the actions in EMBRAER Service Bulletin 145–27–0101; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04; the AFM revision required by AD 2002–26–51, amendment 39–13008, may be removed from the Limitations section of the EMBRAER EMB–145 AFM. Accomplishing the actions in EMBRAER Service Bulletin 145–27–0102; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04; terminates the repetitive inspections required by AD 2005–24–11, amendment 39–14391.

Note 3: Part V of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04, refers to EMBRAER Service Bulletin 145–27–0101, currently at

Revision 02, dated December 27, 2004; and EMBRAER Service Bulletin 145–27–0102, currently at Revision 02, dated January 20, 2005; as additional sources of instructions for accomplishing the installation of a new spring cartridge and implementation of the new logic for the electromechanical gust lock system.

Actions Accomplished Previously

(d) Actions accomplished before the effective date of this AD are acceptable for compliance with corresponding requirements of this AD as specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Modification of the elevator gust lock system before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–27–0075, Change 06, dated July 16, 2002, is acceptable for compliance with paragraph (c)(1) of this AD, provided that, within the compliance time specified in paragraph (c) of this AD, a new spring cartridge is installed and new logic for the electromechanical gust lock system is implemented in accordance with Part IV of EMBRAER Service Bulletin 145–27–0075, Revision 07, dated March 2, 2004, or Revision 08, dated March 3, 2005.

(2) Modification of the elevator gust lock system before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–27–0075, Revision 07, dated March 2, 2004, is acceptable for compliance with paragraph (c)(1) of this AD.

(3) Modification of the elevator gust lock system before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–27–0086, Change 02, dated December 23, 2003; or EMBRAER Service Bulletin 145–27–0086, Change 03, dated April 14, 2004; is acceptable for compliance with paragraph (c)(2) of this AD.

Alternative Methods of Compliance

(e)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 2002–01–01R3, dated November 8, 2002.

Material Incorporated by Reference

(f) Unless otherwise specified in this AD, the actions must be done in accordance with the EMBRAER service information listed in Table 1 of this AD. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. EMBRAER Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005, contains the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1–6, 8, 30–34, 39, 41, 51, 58, 62, 68, 110	08	March 3, 2005.
7, 9–29, 35–38, 40, 42–50, 52–57, 59–61, 63–67, 69–109, 111–117	07	March 2, 2004.

EMBRAER Service Bulletin 145–27–0086, Change 04, dated March 21, 2005, contains the following effective pages:

Page Nos.	Change level shown on page	Date shown on page
1–2, 5, 11–12, 23, 31, 32, 40, 62, 95	04	March 21, 2005.
3–4, 6–10, 13–22, 24–30, 33–39, 41–61, 63–94, 96–137	03	April 14, 2004.

To get copies of this service information, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

EMBAER service bulletin	Revision/change level	Date
145–27–0075	Revision 08	March 3, 2005.
145–27–0086	Change 04	March 21, 2005.
145–27–0087	Change 03	September 27, 2002.

Effective Date

(g) This amendment becomes effective on February 3, 2006.

Issued in Renton, Washington, on December 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24530 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22148; Directorate Identifier 2005–NM–033–AD; Amendment 39–14437; AD 2005–26–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R Series Airplanes, and C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Airbus Model A310–200 and A310–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Airbus Model A300–600 and A310 series airplanes. That AD currently requires repetitive visual inspections to detect corrosion on the lower rim area of the fuselage rear pressure bulkhead; and follow-on actions, if necessary. This new AD requires new repetitive inspections for corrosion on the rear pressure bulkhead between stringer (STGR) 27 (right hand) and STGR27 (left hand), and related investigative and corrective actions if necessary. This AD also requires sending a report of certain information to the manufacturer. The AD also adds airplanes to the applicability of the existing AD. This AD results from findings of severe corrosion on airplanes previously inspected in accordance with the existing AD. We are issuing this AD to detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

DATES: This AD becomes effective February 3, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 3, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information related to Airbus Model A310 series airplanes identified in this AD. Contact Jacques Leborgne, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax (+33) 5 61 93 36 14, for service information related to Airbus Model A300 identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 98–19–22, amendment 39–10763 (63 FR 49656, September 17, 1998). The existing AD applies to certain Airbus Model A300–600 and A310 series airplanes. That NPRM was published in the **Federal Register** on August 22, 2005 (70 FR 48911). That NPRM proposed to require repetitive inspections for corrosion on the rear pressure bulkhead between stringer (STGR) 27 (right hand) and STGR27 (left hand), and related investigative/corrective actions if necessary; and sending a report of certain information to the manufacturer.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request To Reference Latest Issue of Service Bulletin

The commenter states that Airbus has revised Service Bulletin A300–53–6136, dated October 27, 2004, which was referenced as the appropriate source of service information for accomplishing the proposed actions for certain Airbus airplanes. The commenter points out that this service bulletin is now at Revision 01, dated July 18, 2005. The commenter states that Revision 01 of Service Bulletin A300–53–6136 corrects the flow chart in Figure 1 of the service bulletin by changing the sequence of certain inspections, removes information in a flag note, and removes the replacement of titanium fasteners in certain circumstances. The commenter recommends that we reference Airbus Service Bulletin A300–53–6136, Revision 01, and that we also give credit for actions done before the effective date of this AD in accordance with the original issue of this service bulletin.

We agree with the commenter. We have revised Table 1 of the AD to refer to Airbus Service Bulletin A300–53–6136, Revision 01, dated July 18, 2005. In addition, the other service bulletins referenced in the NPRM have also been revised. (Airbus Service Bulletins A300–53–0363 and A310–53–2114, both dated October 27, 2004, were referenced as the appropriate source of service information for accomplishing the proposed actions for certain other Airbus airplanes.) The additional new revisions are Airbus Service Bulletin A300–53–0363, Revision 01, dated June 10, 2005; and Airbus Service Bulletin A310–53–2114, Revision 01, dated September 1, 2005. The revised service bulletins change the compliance of the service bulletin from ''recommended'' to ''mandatory,'' and amend the effectivity. None of the revisions increase the economic burden on any operator or increase the scope of the AD. We have also added a new paragraph (j) to the AD to give credit to operators that have accomplished the actions in accordance with the original issue of the service bulletins.

Request To Give Credit for Actions Accomplished Previously

The commenter requests that we ensure that operators of airplanes on which the proposed inspections were done before the effective date of the AD be given credit for inspections accomplished before that date. The commenter states that, as defined in paragraph (g) of the NPRM, operators that had previously accomplished the inspections would be forced to re-accomplish the inspections within 18

months after the effective date of the AD. The commenter requests that the AD allow credit for any inspection done in accordance with Airbus Service Bulletin A300–53–6136, either the original issue or Revision 01, prior to the effective date of the AD, and that the repetitive interval be measured from the initial inspection, or 18 months after the effective date of the AD, whichever is later.

We partially agree with the commenter. We agree that operators should be given credit for actions accomplished previously in accordance with approved service bulletins. We do not agree that it is necessary to change the AD to give credit. Paragraph (e) of the AD states, ''You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.'' It is possible that on some airplanes the actions were done before the effective date of this AD. On these airplanes, these actions are not required to be repeated, as allowed by the phrase, ''unless the actions have already been done,'' provided the inspections were performed at the same level of complexity and using equipment comparable to that specified for the detailed and special detailed inspections, as applicable, defined in Note 1 and Note 2 of this AD. If the initial inspection has already been done, then the repetitive intervals are measured from the date of completion of the initial inspection. However, any action that has not been accomplished on these airplanes must be done at the time specified in the AD. We have not changed the AD in this regard. Operators may apply for an approval of an alternative method of compliance (AMOC) in accordance with the provisions in paragraph (k) of this AD.

Request To Remove Redundant Reporting Paragraph

The commenter states that the requirement to report corrosion in paragraph (i) of the NPRM is redundant to the current mandatory reporting requirements in Section 121.703 (''Mechanical reliability reports'') of the Federal Aviation Regulations (14 CFR 121.703); and the future requirements in Section 121.704 (''Service difficulty reports (structural)'') of the Federal Aviation Regulations (14 CFR 121.704). The commenter points out that paragraph (g) of the NPRM already says, ''Do any applicable investigative and corrective actions before further flight in accordance with the applicable service bulletin.'' The commenter states that this statement mandates that the service bulletin be followed verbatim, which includes the reporting requirement. The commenter further states that paragraph (h) of the NPRM ensures that the FAA will be aware of findings because that paragraph specifies that if the service bulletin recommends contacting Airbus for repair instructions, the repair must instead be approved by the FAA. Considering all these methods of reporting information, the commenter states that Airbus, the FAA, and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, will have adequate data to determine the extent of corrosion problems in the affected fleet without the report in paragraph (i) of the NPRM. Therefore, the commenter requests that the reporting requirement in paragraph (i) be removed from the AD.

We disagree with the commenter. Paragraph (i) of the NPRM specifies sending the results of the inspection findings to Airbus, whereas the cited Federal Aviation Regulations specify to send such reports to the FAA. As stated in the NPRM, the intent of the reports is to enable Airbus to obtain better insight into the nature, cause, and extent of the corrosion, and to develop a final action to address the unsafe condition; at which time we may consider further rulemaking.

In addition, although paragraph (g) of the NPRM specifies to do all ''related investigative and corrective actions'' in accordance with the service bulletin, the report is neither an investigative nor a corrective action. However, if the report were interpreted to be either an investigative or a corrective action, and was therefore required in accordance with paragraph (g), then the report also would be required to be done before further flight, which would ground an airplane until the report was submitted. The report in paragraph (i) of the NPRM does not have to be submitted until 30 days after the inspection.

Finally, we do not require reports in ADs unless we find that the information is necessary for us, the affected airworthiness authority, or the manufacturer to assess the unsafe condition. The Paperwork Reduction Act requires agencies to consider the extent of the paperwork burden that will accompany any new rule. This Act is intended to reduce these burdens by requiring agencies not only to analyze the information collection and reporting costs they are imposing on the private sector, but to use those analyses to minimize the cost. Therefore, it is our practice to specify when the reports are required, and also to identify when a service bulletin contains a report that is not a requirement of the AD.

We have not changed the AD in this regard.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Clarification of Service Bulletin Dates

Revision 01 of Airbus Service Bulletins A300–53–6136, A300–53–0363, and A310–53–2114, refer to the original issues of those service bulletins as being dated November 1, 2004. However, the date printed on the original issue of those service bulletins is October 27, 2004. We have changed the referenced dates for these service bulletins to October 27, 2004.

Interim Action

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

Costs of Compliance

This AD affects about 190 airplanes of U.S. registry. The new actions take about 10 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $123,500, or $650 per airplane, per inspection cycle.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–10763 (63 FR 49656, September 17, 1998) and by adding the following new airworthiness directive (AD):

2005–26–16 Airbus: Amendment 39–14437. Docket No. FAA–2005–22148; Directorate Identifier 2005–NM–033–AD.

Effective Date

(a) This AD becomes effective February 3, 2006.

Affected ADs

(b) This AD supersedes AD 98–19–22.

Applicability

(c) This AD applies to all airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRBUS AIRPLANES AFFECTED BY THIS AD

Airbus model	As identified in Airbus Service Bulletin—
A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.	A300–53–0363, Revision 01, dated June 10, 2005.
A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.	A300–53–6136, Revision 01, dated July 18, 2005.
A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes	A310–53–2114, Revision 01, dated September 1, 2005.

Unsafe Condition

(d) This AD results from findings of severe corrosion on airplanes previously inspected in accordance with the existing AD. We are issuing this AD to detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

Compliance

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

Service Bulletin Reference

(f) For the purposes of this AD, the term ''service bulletin'' means the accomplishment instructions of the applicable service bulletin identified in Table 1 of this AD.

Inspections and Corrective Actions

(g) Within 60 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 18 months after the effective date of this AD; whichever is later: Do the detailed inspection, special detailed inspections, and any applicable eddy current and x-ray inspection, for corrosion on the rear pressure bulkhead between stringer (STGR) 27 (right hand) and STGR27 (left hand) in accordance with the service bulletin, and repeat these inspections thereafter at intervals not to exceed 36 months. Do any applicable related investigative and corrective actions before further flight in accordance with the service bulletin, except as provided by paragraph (h) of this AD.

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

Note 2: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

(h) If any corrosion damage or crack is found during any inspection or corrective action required by this AD, and the service bulletin recommends contacting Airbus for repair instructions: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

Reporting

(i) Submit a report of corrosion found during the inspections required by paragraph (g) of this AD to SE–A21, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection type, a description of any corrosion found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit

the report within 30 days after the effective date of this AD.

Actions Accomplished According to Previous Revisions of Service Bulletins

(j) Actions done before the effective date of this AD in accordance with Airbus Service Bulletins A300–53–0363, dated October 27, 2004; A300–53–6136, dated October 27, 2004; or A310–53–2114, dated October 27, 2004; as applicable; are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously according to AD 98–19–22 are not approved as AMOCs for this AD.

Related Information

(l) French airworthiness F–2004–193, dated December 22, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use the service bulletins in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–53–0363	01	June 10, 2005.
A300–53–6136	01	July 18, 2005.
A310–53–2114	01	September 1, 2005.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information related to Airbus Model A310 series airplanes identified in this AD. Contact Jacques Leborgne, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax (+33) 5 61 93 36 14, for service information related to Airbus Model A300 identified in this AD. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 19, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24527 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–33–AD; Amendment 39–14434; AD 2005–26–13]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Turbomeca Artouste III series turboshaft engines. That AD currently requires smoke emission checks after every ground engine shutdown, and if necessary, additional checks and possibly removing the engine from service. That action also requires inspection of central labyrinths not previously inspected, or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary. That action also requires the removal of injection wheels at a new lower life limit. This AD includes the same requirements as AD 2002–22–11, but reduces the compliance time for the initial inspection of the central labyrinth and adds repetitive inspections of the central labyrinth. This AD results from reports and analyses of in-flight engine shutdowns occurring since we issued AD 2002–22–11. We are issuing this AD to prevent injection wheel cracks and excessive central labyrinth wear, which could result in an in-flight engine shutdown and possible loss of the helicopter.

DATES: This AD becomes effective February 3, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 3, 2006. The Director of the Federal Register previously approved the incorporation by reference of a certain other publication as listed in the regulations as of December 13, 2002 (67 FR 68022, November 8, 2002).

ADDRESSES: You can get the service information identified in this AD from Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA).

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: We proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Turbomeca Artouste III series turboshaft engines. We published the proposed AD in the **Federal Register** on June 23, 2005 (70 FR 36355). That action proposed to require smoke emission checks after every ground engine shutdown, and if necessary, additional checks and possibly removing the engine from service. That action also proposed to require initial inspection of central labyrinths not previously inspected at reduced compliance times, or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary. That action also proposed to add repetitive inspections of the central labyrinth. Additionally, that action proposed to require the removal of the injection wheels at a new lower life limit.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

About 1,062 Turbomeca Artouste III engines of the affected design are in the worldwide fleet. We estimate that 59 engines installed on helicopters of U.S. registry will be affected by this AD. We also estimate that it will take about 31 work hours per engine to perform the required actions, and that the average labor rate is $65 per work hour. Required parts will cost about $8,100 per engine. Based on these figures, we estimate the AD will cost U.S. operators $596,785.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 99–NE–33–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 Amendment 39–12937 (67 FR 68022, November 8, 2002) and by adding a new airworthiness directive, to read as follows:

2005–26–13 Turbomeca: Amendment 39–14434. Docket No. 99–NE–33–AD.

Effective Date

(a) This AD becomes effective February 3, 2006.

Affected ADs

(b) This AD supersedes AD 2002–22–11, Amendment 39–12937.

Applicability

(c) This AD applies to Turbomeca Artouste III B, B1, and D series turboshaft engines with injection wheels part numbers (P/Ns) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0. These engines are installed on, but not limited to Eurocopter SA 315 LAMA and SA 316 Alouette III helicopters.

Unsafe Condition

(d) This AD results from reports and analyses of in-flight engine shutdowns occurring since we issued AD 2002–22–11. The actions specified in this AD are intended to prevent injection wheel cracks and excessive central labyrinth wear, which could result in an in-flight engine shutdown and possible loss of the helicopter.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Smoke Check

(f) Following every engine ground shutdown, do the following using Turbomeca Artouste III Service Bulletin (SB) No. 218 72 0099, dated September 14, 1998:

(1) After every flight, check for smoke emissions through the exhaust pipe, air intake, or turbine casing drain during rundown and after every engine shutdown. If a smoke emission has been noticed, check the fuel system before the next flight to identify the origin of the smoke emissions.

(2) If smoke is not detected, no action is required until the next engine ground shutdown.

(3) If smoke is detected, inspect for fuel flow in accordance with paragraph 2.B.(1) and 2.B.(2) of the referenced SB.

(i) If fuel flow is not detected, prior to further flight, remove the engine from service and replace with a serviceable engine.

(ii) If fuel flow is detected, remove the electric fuel cock from service and replace with a serviceable part in accordance with section 2.B.(4) and 2.B.(5) of the referenced SB.

(iii) Before entry into service, perform an engine ground run and check the fuel system again for smoke emissions through the exhaust pipe, air intake, or turbine casing drain during engine rundown and after shutdown; if smoke emissions still remain after replacement of the electric fuel cock, prior to further flight, remove the engine from service and replace with a serviceable engine.

(g) For the purpose of this AD, a serviceable engine is defined as an engine that does not exhibit smoke emissions.

Central Labyrinth Inspection

(h) Perform checks and inspections of the central labyrinth and, if necessary, replace the central labyrinth, using paragraph 2 of Turbomeca Alert Service Bulletin (ASB) No. A218 72 0100, Update 2, dated January 23, 2004, and the following Table 1:

TABLE 1.—INSPECTION SCHEDULE

Initial inspection	Repetitive inspection
Prior to 1,750 hours Time-Since-New or 1,750 hours Time-Since-Last Inspection (TSLI), or 50 hours from the effective date of this AD, whichever occurs later.	1,750 hours TSLI.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) The checks, inspections, and replacements must be done in accordance with the following Turbomeca Artouste III alert service bulletins (ASBs):

Document No.	Pages	Revision	Date
ASB A218 72 0099 ..... Total pages: 5	All	1	June 6, 2001.
ASB A218 72 0100 ..... Total pages: 17	All	2	Jan. 23, 2004.

The Director of the Federal Register approved the incorporation by reference of Alert Service Bulletin No. A218 72 0100, Update 2, dated January 23, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register approved the incorporation by reference of Turbomeca Alert Service Bulletin No. A218 72 0099, Update 1, dated June 6, 2001, as of December 13, 2002 (67 FR 68022, November 8, 2002). You can get a copy from Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Related Information

(k) DGAC airworthiness directive F–2004–016, dated February 4, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on December 15, 2005.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–24515 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This final rule amends 16 CFR part 801 and part 803, Appendix, the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions (the ''Form''). The Form must be completed and submitted by persons required to report mergers and acquisitions pursuant to Section 7A of the Clayton Act, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. The revised Form requires that 2002 revenue data, identified by the 2002 North American Industry Classification System (''NAICS''), be provided in response to certain items on the Form.

DATES: Effective December 30, 2005. To facilitate the changeover from using 1997 to 2002 NAICS information, filers may use either 1997 or 2002 information for 30 days following the Effective Date, provided that all filing parties to a transaction use the same year and use the same codes in Item 7. This will allow an orderly transition while minimizing the burden on filing parties.

FOR FURTHER INFORMATION CONTACT: Comments or questions may be directed to Robert L. Jones, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room 302, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2740. E-mail: *HSRHelp@hsr.gov*. For information about the NAICS system, including the 2002 update, see the U.S. Census Bureau's Web site at *http://www.census.gov/epcd/www/naics.html*.

SUPPLEMENTARY INFORMATION:

Background

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390, and amended by Pub. L. 106–553, 114 Stat. 2762 (''HSR Act''), requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice (''Assistant Attorney General''). The HSR Act further provides that such persons must wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require ''that the notification * * * be in such form and contain such documentary material and information * * * as is necessary and appropriate'' to enable the agencies ''to determine whether such acquisitions may, if consummated, violate the antitrust laws.'' Congress similarly granted rulemaking authority to, *inter alia*, ''prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.'' 15 U.S.C.18a(d). Pursuant to this section, the Commission, with the concurrence of the Assistant Attorney General, promulgated rules governing the filing process (''Rules'') [1] and the Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions and accompanying Instructions on July 31, 1978, with an effective date of September 5, 1978, 43 FR 33450 (July 31, 1978). The agencies have since amended or revised the Rules and Form on multiple occasions.

Completion of the Form provides the Commission and the Assistant Attorney General with information and documentary material necessary to conduct an initial review of mergers, acquisitions, and other similar transactions. The Form is not designed to elicit all potentially relevant information relating to a transaction; rather, the information requested assists the Commission and the Assistant Attorney General in determining whether to open an investigation or, alternatively, whether to grant a request for early termination of the waiting period or to allow the waiting period to expire if no such request has been made.

The Form and Instructions currently require that filing persons report revenue data contained in the ''North American Industry Classification System, 1997'' and the ''1997 Numerical List of Manufactured and Mineral Products.'' This requirement was established in a 2001 rulemaking [2] that changed the required reporting format from the Standard Industrial Classification (''SIC'') to the North American Industry Classification System (''NAICS''). The Executive Office of the President, Office of Management and Budget (''OMB'') recently published its North American Industry Classification System—United States, 2002 (''2002 NAICS Manual'') and the Census Bureau has published its 2002 Numerical List of Manufactured and Mineral Products. To allow use of

[1] 16 CFR parts 801, 802 and 803.

[2] Interim Rule: 66 FR 23561 (May 9, 2001). Final Rule: 66 FR 35541 (July 6, 2001).

this updated information, the Form and Instructions are hereby amended to replace references to the 1997 base year with a 2002 base year and to replace the references to the 1997 Numerical List of Manufactured and Mineral Products (EC97M31R–NL) with the 2002 Numerical List of Manufactured and Mineral Products (EC02M31R–NL).

Statement of Basis and Purpose for the Commission's Revision of the Form and the Instructions

The Commission, with the concurrence of the Assistant Attorney General, is adopting and implementing these amendments to the Form and the Instructions relating to Item 5 and Item 7, as well as to Section 801.1(j) of the Rules, to require submission of 2002 NAICS information. The Commission has traditionally relied upon the most current economic data to analyze the potential anticompetitive effects of proposed transactions.[3] The information in the 2002 NAICS Manual and 2002 Numerical List of Manufactured and Mineral Products is the most current information available. We reiterate that filing parties may use either the 1997 or 2002 year for 30 days following the effective date December 30, 2005, provided that all filing parties to a transaction use the same year and use the same codes for Item 7.

Part 801—Coverage Rules

Section 801.1 Definitions

Paragraph (j), the definition of Engaged in Manufacturing, is amended to refer to the 2002 edition of the North American Industry Classification System, rather than the 1997 edition.

Part 803—Transmittal Rules

Appendix to Section 803 Instructions Applicable to Notification and Report Form

Generally, references to ''1997 base year'' will be replaced with ''2002 base year'' throughout the Form and Instructions. Filing persons should refer to the ''2002 NAICS Manual'' and the ''2002 Numerical List of Manufactured and Mineral Products,'' published by the Census Bureau to locate product class codes and product codes.[4]

In response to Item 5 of the Form, filing parties are required to provide revenue data for the most current year and the base year. Specifically, Item 5 is amended as follows: Item 5(a) requires that the filing person provide 2002 base year revenue data for each 6-digit NAICS industry code(s) in which it derived revenues. Item 5(b)(i) requires that a filing person engaged in manufacturing provide 2002 base year revenue for each 10-digit NAICS-based product code(s) in which it derived revenue. Item 5(b)(ii) requires that the filing person identify each manufactured product it has added or deleted since 2002 by 10-digit NAICS-based product code(s).

In response to Item 7 of the Form, for specified industries, filers are required to provide 6-digit NAICS industry codes and descriptions and to list geographic markets for any industry in which the filer and any other party to the transaction derived revenues. Many of these referenced NAICS codes have been changed in the 2002 update. The Instructions to Item 7, specifically Items 7(c)(ii), (iii), (iv), and (v), are amended to identify the updated 2002 codes.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke a Hart-Scott-Rodino filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, the 2000 amendments to the Act were intended to reduce the burden of the premerger notification program by exempting all transactions valued at $50 million or less.[5] Further, none of the proposed rule amendments changes the coverage of the premerger notification rules in any way that would affect small business. Accordingly, the Commission certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–3518, requires agencies to submit ''collections of information'' to the Office of Management and Budget (''OMB'') and obtain clearance before instituting them. Such collections of information include reporting, record keeping, or disclosure requirements contained in regulations. The information collection requirements in the HSR Rules and Form have been reviewed and approved by OMB under OMB Control No. 3084–0005. The current clearance expires on May 31, 2007.

The Commission's proposed revisions to the Form and Rules do not ''substantive[ly] or material[ly] modify'' the existing terms of the currently approved collection of information (OMB Control Number 3084–0005) to necessitate OMB's further review and approval. See 44 U.S.C. 3507(h)(3); 5 CFR 1320.5(g). The individual rule modifications are described more fully below.

Administrative Procedure Act

These rule changes are procedural and do not alter the existing legal obligations of filing parties to submit the most currently available industry classification information. Accordingly, the amendments are not subject to the notice and comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(A).

List of Subjects in 16 CFR Parts 801 and 803

Antitrust.

■ For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR parts 801 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by revising paragraph (j) to read as follows:

§ 801.1 Definitions.

* * * * *

(j) *Engaged in manufacturing.* A person is engaged in manufacturing if it produces and derives annual sales or revenues in excess of $1 million from products within industries in Sectors 31–33 as coded by the North American Industry Classification System (2002 Edition) published by the Executive Office of the President, Office of Management and Budget.

* * * * *

[3] Periodically, the Commission has adjusted the base year when the U.S. Census Bureau published a new ''Economic Census.'' See 45 FR 14205 (March 5, 1980); 51 FR 10368 (March 26, 1986); 55 FR 31371 (August 2, 1990); 60 FR 40704 (August 9, 1995), and 66 FR 23561 (May 9, 2001).

[4] Executive Office of the President, Office of Management and Budget, North American Industry Classification System—United States, 2002 (2002). U.S. Census Bureau, Numerical List of Manufactured and Mineral Products (EC02M31R–NL) (April, 2004).

[5] That figure is now $53.1 million, adjusted for the change in the Gross National Product, and will be adjusted annually.

PART 803—TRANSMITTAL RULES

■ 3. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 4. Revise pages I, V, and VI of the Instructions, and pages 7 and 8 of the Notification and Report Form For Certain Mergers and Acquisitions, in the Appendix to part 803 to read as follows:

BILLING CODE 6750–01–P

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM for Certain Mergers and Acquisitions

INSTRUCTIONS

GENERAL

The Answer Sheets (pp. 1-15) constitute the Notification and Report Form ("the Form") required to be submitted pursuant to § 803.1(a) of the premerger notification rules ("the rules"). Filing persons need not, however, record their responses on the Form.

These instructions specify the information which must be provided in response to the Items on the Answer Sheets. Only the completed Answer Sheets, together with all documentary attachments, are to be filed with the Federal Trade Commission and the Department of Justice.

Persons providing responses on attachment pages rather than on answer sheets must submit a complete set of attachment pages with each copy of the Form.

The term "documentary attachments" refers to materials supplied in responses to Item 3(d), Item 4 and to submissions pursuant to §§ 803.1(b) and 803.11 of the rules.

Information-The central office for information and assistance concerning the rules, 16 CFR Parts 801-803, and the Form is Room 303, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, phone (202) 326-3100.

Definitions-The definitions and other provisions governing this Form are set forth in the rules, 16 CFR Parts 801-803. The governing statute, the rules, and the Statement of Basis and Purpose for the rules are set forth at 43 FR 33450 (July 31, 1978), 44 FR 66781 (November 22, 1979) 48 FR 34427 (July 29, 1983), 61 FR 13688 (March 28, 1996), 66 FR 8693 (February 1, 2001), 70 FR 4994 (January 31, 2005), 70 FR 11513 (March 8, 2005) and Pub. L. No. 106-533, 114 Stat. 2762.

Affidavit-Attach the affidavit required by § 803.5 to page 1 of the Form. Affidavits are not required if the person filing notification is an acquired person in a transaction covered by § 801.30. (See § 803.5(a)).

Responses-*Each answer* should identify the Item to which it is addressed. Use the reverse side of the corresponding answer sheet or attach separate additional sheets as necessary in answering each Item. Each additional sheet should identify at the top of the page the Item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should also be identified.

Enter the name of the person filing notification appearing in Item 1(a) on page 1 of the Form and the date on which the Form is completed at the top of each page of the Form, at the top of any sheets attached to complete the response to any Item, and at the top of the first or cover page of each documentary attachment.

If unable to answer any Item fully, give such information as is available and provide a statement of reasons for non-compliance as required by § 803.3. If exact answers to any Item cannot be given, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All information should be rounded to the nearest thousand dollars.

Year-All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

North American Industry Classification System (NAICS) Data-This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels with respect to operations conducted within the United States. (See § 803.2(c)(1).) All persons must submit certain data at the 6-digit NAICS national industry code level. To the extent that dollar revenues are derived from *manufacturing operations* (NAICS Sectors 31-33), data must also be submitted at the *7-digit NAICS product class and 10-digit NAICS product code levels*. The term "dollar revenues" is defined in § 803.2(d).

References-In reporting information by 6-digit NAICS industry code refer to the *North American Industry Classification System - United States, 2002 (2002 NAICS Manual)* published by the Executive Office of the President, Office of Management and Budget. In reporting information by 7-digit NAICS product class and 10-digit NAICS product code refer to the *2002 Numerical List of Manufactured and Mineral Products* (EC02M31R-NL) published by the Bureau of the Census. Information regarding NAICS also is available at www.census.gov.

Privacy Act Statement-Section 18a(a) of Title 15 of the U.S. Code authorizes the collection of this information. The primary use of this information is to determine whether the merger or acquisition reported in the Notification and Report Form may violate the antitrust laws.

Furnishing the information on the Form is voluntary. Consummation of an acquisition required to be reported by the statute cited above without having provided this information may, however, render a person liable to civil penalties up to $11,000 per day.

Persons filing notification should include the total dollar revenues for all entities included within the person filing notification at the time this Notification and Report Form is prepared (even if such entities have become included within the person since 2002). For example, if the person filing notification acquired an entity in 1998, it must include that entity's 2002 revenues in items 5(a) and 5(b)(i). It must also include that entity's most recent year's revenues in Item 5(b)(iii) and/or Item 5(c).

Item 5(a)-*Dollar revenues by industry.* Provide aggregate 6-digit NAICS industry data for 2002.

Item 5(b)(i)-*Dollar revenues by manufactured product.* Provide the following information on the aggregate operations for the person filing notification for 2002 for each 10-digit NAICS product of the person in NAICS Sectors 31-33 (manufacturing industries).

NOTE: Where the *2002 Numerical List* denotes footnote 1 at the end of a specific Subsector, refer to Appendices A, and then B for detail collected in a specified Current Industrial Report. You must provide 10-digit NAICS product codes and descriptions listed in Appendix B.

Item 5(b)(ii)-*Products added or deleted.* Within NAICS Sectors 31-33 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 2002, indicate the year of addition or deletion, and state total dollar revenues in the most recent year for each product that has been added. Products may be identified either by 10-digit NAICS product code or in the manner ordinarily used by the person filing notification.

Do not include products added since 2002 by reason of mergers or acquisitions of entities occurring since 2002. Dollar revenues derived from such products should be included in response to Item 5(b)(i). However, if an entity acquired since 2002 by the person filing notification (and now included within the person) itself has added any products since 2002, these products and the dollar revenues derived therefrom should be listed here. Products deleted by reason of dispositions of assets constituting less than substantially all of the assets of an entity since 2002 should also be listed here.

Item 5(b)(iii)-*Dollar revenues by manufactured product class.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 7-digit NAICS product class within NAICS Sectors 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 7-digit NAICS product class may be provided if a statement describing the method of estimation is furnished.

Item 5(c)-*Dollar revenues by non-manufacturing industry.* Provide the following information concerning the aggregate operations of the person filing notification for the most recent year for each 6-digit NAICS industry code in NAICS Sectors other than 31-33 (manufacturing industries) in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 6-digit NAICS industry code may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted.

NOTE: *This million dollar minimum is applicable only to Item 5(c).*

JOINT VENTURE OR OTHER CORPORATIONS

Item 5(d)-Supply the following information only if the acquisition is the formation of a joint venture corporation or unincorporated entity. (See § 801.40.)

Item 5(d)(i)-List the name and mailing address of the joint venture corporation or unincorporated entity.

Item 5(d)(ii)(A)-List contributions that each person forming the joint venture corporation or unincorporated entity has agreed to make, specifying when each contribution is to be made and the value of the contribution as agreed by the contributors.

Item 5(d)(ii)(B)-Describe any contracts or agreements whereby the joint venture corporation or unincorporated entity will obtain assets or capital from sources other than the persons forming it.

Item 5(d)(ii)(C)-Specify whether and in what amount the persons forming the joint venture corporation or unincorporated entity have agreed to guarantee its credit or obligations.

Item 5(d)(ii)(D)-Describe fully the consideration which each person forming the joint venture corporation or unincorporated entity will receive in exchange for its contribution(s).

Item 5(d)(iii)-Describe generally the business in which the joint venture corporation or unincorporated entity will engage, including location of headquarters and principal plants, warehouses, retail establishments or other places of business, its principal types of products or activities, and the geographic areas in which it will do business.

Item 5(d)(iv)-Identify each 6-digit NAICS industry code in which the joint venture corporation or unincorporated entity will derive dollar revenues. If the joint venture corporation or unincorporated entity will be engaged in manufacturing also specify each 7-digit NAICS product class in which it will derive dollar revenues.

ITEM 6

This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired. Persons filing notification may respond to Items 6(a), 6(b), or 6(c) by referencing a "document attachment" furnished with this Form if the information so referenced is a complete response and is up-to-date and accurate. Indicate for each Item the specific page(s) of the document that are responsive to that Item.

Item 6(a)-*Entities within the person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $10 million may be omitted.

Item 6(b)-*Shareholders of person filing notification.* For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

Item 6(c)-Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuers, and holding of issuers with total assets of less than $10 million may be omitted.

ITEM 7

If, to the knowledge or belief of the person filing notification, the acquiring person filing notification derived dollar revenues in the most recent year from operations in industries within any 6-digit

NAICS industry code in which any acquired person that is a party to the acquisition also derived dollar revenues in the most recent year (or in which a joint venture corporation or unincorporated entity will derive dollar revenues), then for each such 6-digit NAICS industry code:

Item 7(a)-supply the 6-digit NAICS industry code and description for the industry;

Item 7(b)-list the name of each person which is a party to the acquisition which also derived dollar revenues in the 6-digit industry;

Item 7(c)-*Geographic market information*:

Item 7(c)(i)-for each 6-digit NAICS industry code within NAICS Sectors 31-33 (manufacturing industries) listed in Item 7(a) above, list the states or, if desired, portions thereof in which, to the knowledge or belief of the person filing notification, the products in that 6-digit NAICS code produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(ii)- for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 11 (agriculture, forestry, fishing and hunting); 21 (mining); 22 (utilities); 23 (construction); 48-49 (transportation and warehousing); 511(publishing industries); and 71 (arts, entertainment and recreation) listed in item 7(a) above, list the states or, if desired, portions thereof in which the person filing notification conducts such operations;

Item 7(c)(iii)-for each 6-digit NAICS industry code within NAICS Sector 42 (wholesale trade) listed in Item 7(a) above, list the states or, if desired, portions thereof in which the customers of the person filing notification are located;

Item 7(c)(iv)-for each 6-digit NAICS industry code within NAICS Sectors or Subsectors 44-45 (retail trade); 512 (motion picture and sound recording industries); 515 (broadcasting); 516 (internet publishing & broadcasting); 517 (telecommunications); 518 (internet service providers); 519 (other information services); 521 (monetary authorities- central bank); 522 (credit intermediation and related activities); 532 (rental and leasing services); 62 (health care and social assistance); 72 (accommodations and food services); 811 (repair and maintenance); and 812 (personal and laundry services) listed in Item 7(a) above, provide the address, **arranged by state, county and city or town,** of each establishment from which dollar revenues were derived in the most recent year by the person filing notification;

Item 7(c)(v)- for each 6-digit NAICS industry code within NAICS Subsectors 523 (securities, commodity contracts and other financial investments and related activities); 525 (funds, trusts and other financial vehicles); 53 (real estate and rental and leasing); 54 (professional, scientific and technical services); 55 (management of companies and enterprises); 56 (administrative and support and waste management and remediation services); 61 (educational services); 813 (religious, grantmaking, civic, professional, and similar organizations); and NAICS Industry Group 5242 (insurance agencies and brokerages, and other insurance related activities) listed in Item 7(a) above, list the states or, if desired, portions thereof in which establishments were located from which the person filing notification derived revenues in the most recent year; and

Item 7(c)(vi)-for each 6-digit NAICS industry code within NAICS Industry Group 5241 (insurance carriers) listed in Item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

NOTE: Except in the case of those NAICS major industries in the Sectors and Subsectors mentioned in Item 7(c)(iv) above, the person filing notification may respond with the word "national" if business is conducted in all 50 states.

ITEM 8

Item 8-*Previous acquisitions* (to be completed by acquiring persons). Determine each 6-digit NAICS industry code listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which either the acquired issuer derived revenues of $1 million or more in the recent year (or, in which, in the case of the formation of a joint venture corporation or unincorporated entity, the joint venture corporation or unincorporated entity reasonably can be expected to derive revenues of $1 million or more), or revenues of $1 million or more in the most recent year were attributable to the acquired assets. For each such 6-digit NAICS industry code, list all acquisitions made by the person filing notification in the five years prior to the date of filing of entities deriving dollar revenues in that 6-digit NAICS industry code. List only acquisitions of 50 percent or more of the voting securities of an issuer which had annual net sales or total assets greater than $10 million in the year prior to the acquisition, and any acquisitions of assets valued at or above the statutory size-of-transaction test at the time of their acquisition.

For each such acquisition, supply:

(a) the name of the entity acquired;

(b) the headquarters address of the entity prior to the acquisition;

(c) whether securities or assets were acquired;

(d) the consummation date of the acquisition; and

(e) the 6-digit (NAICS code) industries by (number and description) identified above in which the acquired entity derived dollar revenues.

CERTIFICATION- (See § 803.6.)

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5 (See "References" listed in the General Instructions to the Form. Refer to the *North American Industry Classification System-United States, 2002* (*2002 NAICS Manual*) for the 6-digit (NAICS) industry codes. Refer to the *2002 Numerical List of Manufactured and Mineral Products* (EC02M31R-NL) for the 7-digit product class codes and the 10-digit product codes. Report revenues for the 7-digit product class codes and 10-digit product codes using the codes in the columns labeled "Product code." For further information on NAICS-based codes visit the www.census.gov web site.)

5(a) DOLLAR REVENUES BY INDUSTRY

6-DIGIT INDUSTRY CODE	DESCRIPTION	2002 TOTAL DOLLAR REVENUES

NAME OF PERSON FILING NOTIFICATION	DATE

ITEM 5(b)(i) DOLLAR REVENUES BY MANUFACTURED PRODUCTS

10-DIGIT PRODUCT CODE	DESCRIPTION	2002 TOTAL DOLLAR REVENUES

FTC FORM C4 (rev. 11/28/05)

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–24684 Filed 12–29–05; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1345

[Docket No. NHTSA–2005–22879]

RIN 2127–AJ72

Incentive Grant Criteria for Occupant Protection Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the application due date for the regulation governing the Occupant Protection Incentive Grant Program, 23 CFR part 1345 from August 1 of the applicable fiscal year to February 15. On November 14, 2005, NHTSA issued an interim final rule and technical amendments to the regulation in light of new legislation extending the program. The interim final rule proposed to change the application due date from August 1 to February 15 of the applicable fiscal year. We solicited comments from the States on this single issue. No comments were received.

DATES: The final rule is effective December 30, 2005.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Hammond, Injury Control Operations and Resources, NTI–200, telephone (202) 366–2121, fax (202) 366–7394. For legal issues: David Bonelli, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 2003 of The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178 (1998) established a new occupant protection incentive grant program under Section 405 of Title 23, United States Code. Under this program, States could qualify for incentive grant funds by adopting and implementing effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. The program made grant funds available from fiscal year (FY) 1998 through FY 2003, and was continued through FY 2005 by Congressional appropriations extending TEA–21 grant programs. On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), Pub. L. 109–59. SAFETEA–LU extends the occupant protection incentive grant program from FY 2006 through FY 2009.

On November 14, 2005, NHTSA issued an interim final rule and technical amendments to the regulation governing the Occupant Protection Incentive Grant program, 23 CFR part 1345, in light of SAFETEA–LU's extension of the program. The technical amendments conformed the dates of the regulation to those in SAFETEA–LU. The interim final rule proposed to change the application due date from August 1 to February 15 of the applicable fiscal year. We indicated that an earlier application due date is appropriate for the new program because less lead time is necessary for States to submit applications under the extension of this well-established program. We also noted that the new due date would allow these grant funds to be awarded in time for spring national safety belt mobilization campaigns. We solicited comments from the States on this single issue until December 14, 2005. No comments were received. Therefore, this final rule adopts our proposed change to the application due date in § 1345.4(a)(4) from August 1 of the applicable fiscal year to February 15. The agency finds good cause to make this rule effective immediately, because of the need to give States sufficient notice of application requirements.

Statutory Basis for This Final Rule

The statutory basis for this rule is the Safe, Accountable, Flexible, Efficient Transportation Equity Act '' A Legacy for Users (SAFETEA–LU), Pub. L. 109–59 (2005). SAFETEA–LU extends the occupant protection incentive grant program from FY 2006 through FY 2009 by amending provisions of 23 U.S.C. 405.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. This rulemaking document is not significant under Executive Order 12866 or the Department of Transportation's (DOT) regulatory policies and procedures. (44 FR 11034, February 26, 1979.) This rulemaking action makes only a single change—an amendment to the application due date '' to the regulation governing the Occupant Protection Incentive Grant program. It will not impose any additional burden on any person. The agency believes that this impact is minimal and does not warrant the preparation of a regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action makes only a single change—an amendment to the application due date—to the regulation governing the Occupant Protection Incentive Grant program. This rulemaking does not impose any change that would result in any environmental impacts. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. This rulemaking action makes only a single change—an amendment to the application due date—to the regulation governing the Occupant Protection Incentive Grant program. States are the recipients of any funds awarded under this program, and they are not considered to be small entities, as that term is defined in the Regulatory Flexibility Act. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA 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.'' This final rule does not change the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. This final rule merely changes the application due date in § 1345.4(a)(4) from August 1 of applicable fiscal year to February 15.

E. Paperwork Reduction Act

This final rule does not add any new information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The existing requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These

requirements have been approved under OMB No. 2127–0600, through April 30, 2008.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

G. Civil Justice Reform

This final rule does not have any retroactive effect. A petition for reconsideration or other administrative proceedings are not required before parties may file suit in court.

H. Privacy Act

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

List of Subjects in 23 CFR Part 1345

Grant programs—Transportation, Highway safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 23 CFR Part 1345 is amended to read as follows:

PART 1345—INCENTIVE GRANT CRITERIA FOR OCCUPANT PROTECTION PROGRAMS

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

Authority: Pub. L. 105–78; Pub. L. 109–59; 23 U.S.C. 405, delegation of authority at 49 CFR 1.50.

■ 2. Accordingly, the interim final rule amending 23 CFR part 1345 which was published at 70 FR 69078 on November 14, 2005, is adopted as a final rule without change.

Issued on: December 23, 2005.

Gregory Walter,

Senior Associate Administrator for Policy and Operations.

[FR Doc. 05–24653 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–108–FOR]

West Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia revised its Code of State Regulations (CSR) concerning surety bonds. The amendment is intended to provide the State with an alternative source of reliable financial information about the surety, and to allow sureties that are licensed and in good financial condition but are not currently listed with the U.S. Department of the Treasury as an acceptable surety of Federal bonds to provide surety bonds to the coal industry in West Virginia. The amendment was authorized by the West Virginia Secretary of State as an emergency rule under the State's Administrative Procedures Act.

DATES: *Effective Date:* December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158, Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

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

II. Submission of the Amendment

By letter dated October 17, 2005 (Administrative Record Number WV–1441), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of a proposed emergency rule revision to CSR 38–2–11.3.a.3 concerning surety bonds, a briefing document, an emergency rule justification, which includes an affidavit that was submitted in support of the emergency rule package, and a decision by the Secretary of State dated October 11, 2005, approving the emergency rule.

In its submittal of this amendment, the WVDEP stated that its current rule at CSR 38–2–11.3.a.3 requires that after July 1, 2001, a surety must be recognized by the Treasurer of the State as holding a certificate of authority from the United States Department of the Treasury as an acceptable surety on Federal bonds (otherwise referred to as being ''T-Listed''). The WVDEP stated that the original standard was adopted to address concerns about the financial solvency of sureties providing reclamation bonds in West Virginia. The WVDEP did not have the necessary resources or expertise to regularly and timely monitor the financial condition of sureties doing business in West Virginia. However, a surety that is T-Listed is required to provide, on a regular basis, financial information to the U.S. Department of the Treasury, which reviews this information and provides its findings to State regulatory agencies. While this information provided by the Department of the Treasury has been helpful, WVDEP

stated, this restriction has prevented sureties that are not T-Listed, and that are otherwise in good financial condition, from providing reclamation bonds in West Virginia. The WVDEP stated that this, along with other reasons, has adversely impacted the market for reclamation bonds in West Virginia. Further, the WVDEP stated, since a surety must have at least two years experience providing surety bonds before it can be T-Listed, a new insurance company or an existing insurance company that has not previously issued surety bonds cannot offer surety bonds in West Virginia.

The WVDEP stated that the emergency rule amendment to CSR 38–2–11.3.a.3 not only addresses the concerns noted above by providing an alternative source of reliable financial information about the surety, but it also allows sureties that are licensed and in good financial condition but are not T-Listed to provide surety bonds in West Virginia.

The WVDEP stated that an ''emergency'' exists under the State's Administrative Procedures Act because there is presently a great demand for reclamation bonds from the coal industry in West Virginia that is not being met by the limited number of sureties currently offering surety bonds in West Virginia. As a result, alternative, more expensive means are being used by coal companies to comply with the State's bonding requirements. Among other things, this has greatly restricted the availability of capital for the development of new coal mines and the creation of new jobs. The State acknowledges that at a time when coal is so important to West Virginia's economy, this dearth of surety bonds is having a significant negative impact on West Virginia's coal industry. The proposed amendment to 38 CSR 2 is thus necessary ''to prevent substantial harm to the public interest.''

By electronic mail dated November 4, 2005, WVDEP submitted revisions it made to its emergency rule based upon the State's comment period which ended on October 27, 2005 (Administrative Record Number WV–1447). The revision package consists of the amended emergency rule, Form #8 Notice of an Emergency Amendment to an Emergency Rule, amended Emergency Rule Questionnaire dated October 28, 2005, and Form #3 Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rulemaking Review Committee. These documents were filed with the West Virginia Secretary of State and the Legislative Rulemaking Review Committee on November 2, 2005.

We announced receipt of the proposed amendment in the November 8, 2005, **Federal Register** (70 FR 67654). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment (Administrative Record Number WV–1448). We did not hold a hearing or a meeting because no one requested one. The public comment period closed on December 8, 2005. We received comments from one industry organization and one Federal agency.

III. OSM's Findings

Following are the findings that we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment in full, as modified on November 4, 2005. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

CSR 38–2–11.3.a.3 Surety

The existing rule currently provides that surety received after July 1, 2001, must be recognized by the Treasurer of the State as holding a current certificate of authority from the U.S. Department of the Treasury as an acceptable surety on Federal bonds. In its October 17, 2005, submittal, CSR 38–2–11.3.a.3 was proposed to be amended by adding new language at the end of the existing requirement to provide as follows:

> 11.3.a.3. Surety received after July 1, 2001 must: (i) be recognized by the treasurer of state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds; Or (ii) submit to the Secretary proof that the surety holds a valid license issued by the basis a certificate of good standing or other evidence demonstrating that the surety remains licensed or otherwise in good standing with the West Virginia Insurance Commissioner and the insurance regulator of its domiciliary state and within four (4) years take all steps necessary to obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

The WVDEP filed the emergency rule with the West Virginia Secretary of State on September 21, 2005. The Secretary of State approved the rule on an emergency basis pursuant to W. Va. Code 29A–3–15a on October 11, 2005.

The WVDEP also filed a legislative rule containing the same language with the Secretary of State on September 21, 2005 (Administrative Record Number WV–1442). At the same time, the State announced a public comment period on the legislative rule. The public comment period commenced on September 21, 2005, and closed on October 27, 2005. A public hearing was held at the WVDEP office in Kanawha City prior to the close of the comment period.

On October 3, 2005, the WVDEP provided OSM a copy of the proposed rule for informal review. Unlike the State's existing surety bond provisions at CSR 38–2–11.3.a.1 and the Federal surety bond requirements at 30 CFR 800.20(a), the proposed revision at CSR 38–2–11.3.a.3 did not appear to require the surety to be licensed to do business in the State. To resolve this concern and to make additional clarifications without altering the purpose or intent of either the emergency or the legislative rule, on October 14, 2005 (Administrative Record Number WV–1443), OSM recommended that the language in both rules be revised as follows:

> 11.3.a.3. Any company that executes surety bonds in the State after July 1, 2001, must: (i) Be recognized by the treasurer of the state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds by being included on the Treasury Department's listing of approved sureties (Department Circular 570); or (ii) submit proof to the Secretary that it holds a valid license issued by the West Virginia Insurance Commissioner, and agree to submit to the Secretary on at least a quarterly basis a certificate of good standing from the West Virginia Insurance Commissioner and such other evidence from the insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also in good standing in that state. Companies not included on the United States Treasury Department's listing of approved sureties must diligently pursue application for listing, submit evidence on a semi-annual basis demonstrating that they are pursuing such listing, and within four (4) years, obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

At the time, State officials agreed that while the recommended technical revisions offered by OSM appeared to clarify that a surety must be licensed to do business in the State and did not change the intent of their initial rule, they needed to wait until after the close of their comment period before making any changes to the rule. The WVDEP stated that it would submit the revisions and any additional changes to OSM after the close of the State's comment period on October 27, 2005. The WVDEP further stated that the revision would be in the form of both an emergency and a legislative rule. We subsequently stated in our November 8, 2005, proposed rule notice that if the WVDEP submits revised rules that contain language identical to the language recommended by OSM, and

quoted above, that revised language would be acted upon by OSM in this final rulemaking. If substantive changes beyond or other than those recommended by OSM were included in the revised rules, we stated that we may need to reopen the comment period.

The legislative rule was submitted to the Legislative Rulemaking Review Committee after the close of the comment period, and it is to be acted upon by the West Virginia Legislature during the upcoming 2005–2006 regular legislative session. If that rule is adopted with the identical language recommended by OSM as quoted above, no further action will be required by OSM, and it will become part of West Virginia's permanent regulatory program upon submission by the State.

Given that an emergency situation currently exists in West Virginia with regard to surety bonds and to avoid any unnecessary delays in approving the proposed State rule, we requested comments on both the proposed State rule and our suggested revisions to that rule as quoted above. We stated in the proposed rule notice that any changes adopted by the State after the close of its public comment period would result in the revision to both its emergency and legislative rules. As mentioned above, any substantive changes in the proposed State rules that go beyond the suggested language provided by OSM and quoted above would also be subject to further rulemaking.

In its November 4, 2005, submittal, the WVDEP provided revisions to its emergency rule at CSR 38–2–11.3.a.3 that were approved by the West Virginia Secretary of State. The effective date of the revision is September 21, 2005. As proposed in the State's November 4, 2005, submittal, the existing language was deleted and CSR 38–2–11.3.a.3 now provides as follows:

> 11.3.a.3. Any company that executes surety bonds in the State after July 1, 2001, must: (i) Be recognized by the treasurer to [of] the state as holding a current certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds by being included on the Treasury Department's listing of approved sureties (Department Circular 570); or (ii) submit proof to the Secretary that it holds a valid license issued by the West Virginia Insurance Commissioner, and agree to submit to the Secretary on at least a quarterly basis a certificate of good standing from the West Virginia Insurance Commissioner and such other evidence from the insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also in good standing in that state. Companies not included on the United States Treasury Department's listing of approved sureties must diligently pursue application for listing, submit evidence on a semi-annual basis demonstrating that they are pursuing such listing, and within four (4) years, obtain a certificate of authority from the United States Department of the Treasury as an acceptable surety on federal bonds.

With the exception of the typographical error which the State intends to correct (''to'' should be changed to ''of''), we find that the revised emergency rule language submitted by the State on November 4, 2005, is identical to the language that OSM recommended it adopt, and that is quoted above, to resolve our initial concerns with the language that was submitted on October 17, 2005. Furthermore, we find that, as amended, the emergency rule at CSR 38–2–11.3.a.3 contains changes that have no direct Federal counterparts, but is, nevertheless, consistent with and no less effective than the Federal regulations at 30 CFR 800.20(a) concerning surety bonds and can be approved. As we stated above, the legislative rule that will make permanent the provisions of the emergency rule was submitted to the West Virginia Legislative Rulemaking Review Committee on November 2, 2005. That provision will be acted upon by the West Virginia Legislature during the upcoming 2005–2006 regular legislative session. If that legislative rule is adopted with language identical to that which we are approving here, and quoted above, no further action will be required by OSM, and it will become part of West Virginia's permanent regulatory program upon submission by the State. Any substantive changes to that legislative rule that go beyond the language that we are approving here and quoted above will be subject to public review and further rulemaking.

IV. Summary and Disposition of Comments

Public Comments

We published a **Federal Register** notice on November 8, 2005, and asked for public comments on the proposed State amendment (Administrative Record Number WV–1448). One organization responded on December 2, 2005 (Administrative Record Number WV–1450). The West Virginia Coal Association (WVCA) encouraged OSM's approval of the amendment. According to the WVCA, there are currently a very limited number of surety companies offering surety bonds in West Virginia. Because of market conditions, there is a great demand for surety bonds. The WVCA said that the proposed amendment would not only have the potential to increase the availability of bonds in West Virginia, but it would do so without increasing any risk for the State. It would only allow surety companies that are licensed in West Virginia and in good standing/good financial condition, but are not T-listed, to market surety bonds in West Virginia. As noted above in the finding, we are approving the amendment.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1446). We only received comments from the U.S. Environmental Protection Agency. Its comments are summarized below.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that West Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number WV–1446). EPA responded by letter dated December 5, 2005, and stated that it did not identify any apparent inconsistencies with the Clean Water Act or other statutes and regulations under EPA's jurisdiction. EPA went on to say, ''Our primary interests concerning reclamation bonds are that they be sufficient to provide restoration of land and water resources in case of bankruptcy and that surety companies which underwrite these bonds remain solvent.'' (Administrative Record Number WV–1451). We note that the amendment that we are approving here does not alter the State's approved bonding requirements concerning the amount of bond.

V. OSM's Decision

Based on the above findings, we are approving the program amendment West Virginia sent us on October 17, 2005, and amended on November 4, 2005. To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5

U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the Federal bonding regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is consistent with and no less effective than the Federal bonding regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions used in the Federal bonding regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the Federal bonding regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 2005.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

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

PART 948—WEST VIRGINIA

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

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

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

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of publication of final rule	Citation/description
* * * * * * *		
October 17, 2005, and amended November 4, 2005	December 30, 2005	CSR 38–2–11.3.a.3.

[FR Doc. 05–24643 Filed 12–29–05; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–OAR–2005–0161; FRL–8017–1]

Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Requirements for 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: EPA is taking direct final action to interpret and clarify the 2006 default standard applicable under the Renewable Fuel Program set forth in the Energy Policy Act of 2005. The Act requires that 2.78 volume percent of gasoline sold or dispensed to consumers in the U.S. in 2006 be renewable fuel if EPA does not promulgate comprehensive regulations to implement the Renewable Fuel Program by August 8, 2006. Given the short timeframe available and the need to provide certainty to the regulated community, the Agency is finalizing a limited set of regulations for the default standard for 2006 that will provide for collective compliance by refiners, blenders, and importers to meet the 2.78 volume percent requirement, with compliance determined by looking at the national pool of gasoline sold in 2006. The Agency will develop and promulgate the comprehensive program subsequent to this action.

DATES: This rule is effective on February 28, 2006 without further notice, unless EPA receives adverse comment by January 30, 2006. If we receive such comment on one or more distinct sections of this rule, we will publish a timely withdrawal in the **Federal Register** informing the public of the distinct provisions that will become effective and which distinct provisions of this rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2005–0161. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4131, FAX (734) 214–4816, E-mail *macallister.julia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal if adverse comments are filed. This rule is effective on February 28, 2006 without further notice, unless EPA receives adverse comment by January 30, 2006. If EPA receives adverse comment on one or more distinct sections of this rule we will publish a timely withdrawal in the **Federal Register** indicating which provisions of this rule will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on the proposal. Any parties interested in commenting must do so at this time.

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this final action include those involved with the production, distribution and sale of gasoline motor fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners, Importers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To decide whether your organization might be affected by this action, you should carefully examine today's notice and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Overview
A. What Is Being Finalized for 2006?

B. Why Is EPA Taking This Action?
C. When Will EPA Take Action for 2007 and Beyond?
II. Statutory Requirements for the Renewable Fuel Standard Program
A. What is the Renewable Fuels Standard Program?
B. What is the Default Standard for 2006?
C. What Happens if EPA Does Not Promulgate Default Regulations for 2006?
III. Collective Renewable Fuel Use and the Default Standard
A. Liability Under The Default Standard
1. Who should be liable?
2. What is collective liability?
B. Why We Believe That The Default Standard Will Be Met Collectively
IV. Program Description for 2006
A. Liable parties
B. How will compliance be determined?
1. Activities required of liable parties
2. Renewable fuels accounting for compliance purposes
3. EPA determination of collective compliance with the default standard
C. No role for credit trading
V. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act
VI. Legal Authority

I. Overview

Section 1501 of the Energy Policy Act of 2005 (Energy Act or the Act) amended the Clean Air Act by adding a new provision establishing a national renewable fuel program (also commonly known as the Renewable Fuel Standard program, or RFS program). This program is designed to significantly increase the volume of renewable fuels that are blended into gasoline, starting with calendar year 2006. The Act calls on EPA to issue implementing regulations by August 8, 2006, and provides that if EPA has not adopted such regulations by that date then 2.78 percent of the gasoline sold or dispensed to consumers for calendar year 2006 must be renewable fuel.

EPA does not believe that it can meet the August, 2006, statutory deadline. The issues that need to be resolved in adopting regulations to establish the comprehensive compliance and credit trading program are complex, making it important for EPA to receive input from the various stakeholders. This effort will require significant amounts of time and effort. In addition, a comprehensive set of regulations implementing the RFS would constitute a major rulemaking effort, which typically requires a significant amount of analysis of important issues such as emissions inventory impacts, costs, feasibility, and benefits. This work cannot be completed in the context of a final rulemaking by August, 2006, which must be preceded by a notice and comment process. At the same time, it is critical that industry be informed of how to demonstrate compliance prior to August, 2006, since the program begins in January 2006. The default provisions in the Act are not self explanatory, neither identifying the responsible parties nor the method by which they must demonstrate compliance. EPA is therefore finalizing a limited set of regulations that will interpret and clarify the statutory default provision for 2006. The rule would provide certainty to the parties involved as to their responsibilities for 2006, and will help to provide a smooth transition to the long-term RFS program. This section summarizes the regulatory approach we are taking for 2006.

A. What Is Being Finalized for 2006?

The Energy Policy Act of 2005 anticipated the possibility that a full RFS program might not be promulgated by the start of 2006, and so provided a default standard applicable to 2006 only. The default standard specifies that 2.78 volume percent of gasoline sold or dispensed to consumers in the U.S. in calendar year 2006 must be renewable fuel. The default standard is applicable if the Agency does not promulgate regulations to implement the full RFS program.

The Agency is interpreting the default standard for 2006 with regulations identifying the liable parties as refiners, importers, and blenders. Compliance with the default standard, however, will be determined on a collective, rather than an individual, basis. Under this approach, refiners, blenders, and importers will together be responsible for meeting the default 2.78 percent standard, and compliance with this standard will be calculated over the pool of gasoline sold to consumers. An individual refiner, blender, or importer will not be responsible for meeting the 2.78 percent standard for the specific gasoline it produces. The Agency will determine compliance following 2006 using data on gasoline and renewable fuel consumption available from the Energy Information Administration, supplemented by other readily available information. If we determine that the default standard has not been met in 2006 on this collective basis, any deficit will be carried forward and applied as an adjustment to the standard for 2007. The regulations implementing the default standard for 2006 will not include any provisions for credit generation or trading, given the collective nature of the obligation.

B. Why Is EPA Taking This Action?

The rulemaking required to implement the full RFS program, including both program design and the various analyses necessary, will require a substantial effort involving many stakeholders. For instance, it will require the Agency to undertake an analysis of small business impacts under the Small Business Regulatory Enforcement Flexibility Act (SBREFA), provide public notice through a proposed rule and an opportunity for comment including an opportunity for a public hearing, a Regulatory Impact Analysis, and ultimately produce a final rule. This process cannot occur by the time the RFS program begins in January 2006, nor does EPA anticipate that it can be completed by the one year deadline set in the Act. Therefore, we believe the default standard of 2.78 percent will apply to calendar year 2006.

However, the default standard provided in the Act will be difficult for the regulated community to interpret and implement without additional guidance from the Agency. Although the Act provided that the default standard of 2.78 percent would apply in 2006 in the event that the Agency did not promulgate regulations implementing the full renewable fuels program, the default standard provision does not specify the liable parties and the specific nature of their obligation. It also does not discuss compliance mechanisms, reporting requirements, or credit trading. The resulting uncertainty associated with the default standard will create confusion and risks a problematic initial implementation of the RFS program. In the extreme, allowing the default standard to go into effect without EPA guidance could result in significant disruptions in the gasoline and renewable fuel production, blending, and distribution systems.

The goal of today's action is to provide certainty to parties involved in the production and distribution of gasoline and renewable fuels regarding the Agency's approach to determining compliance with the default standard for 2006. Today's action provides a

compliance mechanism that is simple and straightforward to implement, explains that the default standard will be met on a collective basis, and can be finalized expeditiously.

In addition to meeting the need for clarity in the limited timeframe available, we believe that the collective approach to compliance for 2006 is reasonable given our expectation that the default standard will be met on a collective basis in 2006 even without imposition of any RFS obligations. Not only has the U.S. Department of Agriculture projected total ethanol production for 2006 to be above 4.0 billion gallons, but the Renewable Fuel Association has indicated that total ethanol production capacity already exceeds 4.1 billion gallons and that additional production capacity currently under construction exceeds 1.2 billion gallons. Production of biodiesel and cellulosic ethanol, as well as imports of ethanol, increase these estimates even further. It's clear that capacity in 2006 will be adequate to produce the renewable fuel needed to meet the 2.78 percent default standard. In addition, sustained high gasoline prices, state bans on MTBE, and continued gasoline demand growth in the face of limited refining capacity all support our conclusion that the default standard for 2006 will be met on a collective basis based on market forces alone. Section III.B provides more details regarding these projections. In the unlikely event that the default standard is not met on a collective basis for 2006, a deficit carryover provision will allow us to make up for any shortfall by adjusting the applicable standard in 2007 commensurately.

C. When Will EPA Take Action for 2007 and Beyond?

The default standard of 2.78 percent provided in the Act applies exclusively to calendar year 2006, and the collective compliance approach we are implementing through today's action will likewise apply only to 2006. For 2007 and beyond, the Agency will not only need to determine and publish the applicable renewable fuel standard for each year, but will also need to specifically identify liable parties, lay out the compliance program including recordkeeping and reporting requirements, and delineate all elements of the credit trading program including how credits are generated, how they can be transferred, and how they can be used for compliance purposes. All these and many other issues impacting the full RFS program will be addressed in a subsequent Agency action and are not discussed in today's direct final rulemaking (DFRM).

II. Statutory Requirements for the Renewable Fuel Standard Program

This section describes the Act's provision regarding the long-term RFS program, and the default standard that goes into effect automatically in the event that the Agency does not promulgate regulations before August 8, 2006 implementing the long-term program. It also describes the problems that may occur if the Agency does not clarify such things as liable parties, compliance mechanisms, and the role of credit trading under the default standard.

A. What is the Renewable Fuels Standard Program?

Section 1501 of the Energy Policy Act of 2005 (the Act) describes the renewable fuel program, also known as the Renewable Fuel Standard (RFS) program. This provision was added to the Clean Air Act as Section 211(o), and requires EPA to establish a program to ensure that U.S. gasoline contains specific volumes of renewable fuel for each calendar year 2006 through 2012, as shown in Table II.A–1 below.

TABLE II.A–1.—APPLICABLE VOLUMES OF RENEWABLE FUEL UNDER THE RFS

Calendar year	Billion gallons
2006	4.0
2007	4.7
2008	5.4
2009	6.1
2010	6.8
2011	7.4
2012	7.5

Starting with 2013, EPA is required to establish the applicable national volume which must require at least the same overall volume percentage of renewable fuel as was required in 2012.

In order to ensure the use of the renewable fuel volume specified for each year, the Agency must set a percentage standard for each year representing the percentage of gasoline sold or introduced into commerce which must be renewable fuel. The standard is to be set based on the renewable fuel volumes shown in Table II.A–1 and gasoline volume projections provided by the Energy Information Administration (EIA). The standard for each year must be published in the **Federal Register** by November 30 of the previous year.

Renewable fuels are defined in the Act primarily on the basis of the feedstock. In general, renewable fuels must be produced from plant or animal products or wastes, as opposed to fossil fuel sources. The Act specifically identifies several types of motor vehicle fuels as being encompassed by the definition, including cellulosic biomass ethanol, waste-derived ethanol, biogas, and biodiesel.

The percentage standard is applicable to refineries, blenders, and/or importers, as appropriate. The percentage standard must be adjusted such that redundant obligations are avoided, and must take into account the fact that small refineries are exempted from the program through 2011.[1] For liable parties, the RFS standard must be met on an annual averaging basis and does not apply on a per-gallon basis.

The Act requires the Agency to promulgate a credit trading program for the RFS program. The credit trading program will serve two purposes. First, it will allow parties who are liable for the standard to comply through the purchase of credits if they cannot or do not wish to blend renewable fuels into gasoline themselves. Second, it will permit renewable fuels that are not blended into gasoline, such as biodiesel and biogas, to participate in the RFS program. The Agency must also determine who can generate credits and under what conditions, how credits may be transferred from one party to another, and in certain cases the appropriate value of credits from different types of renewable fuel.

The Agency envisions promulgation of facility registration, recordkeeping and reporting requirements, enforcement provisions, and various fuel tracking mechanisms to implement the program. These provisions will enable the credit trading program to function properly and will ensure adequate bases for Agency enforcement efforts.

The Act also contains several other provisions that could affect the comprehensive RFS program. For instance, the Energy Information Administration (EIA) is required to determine whether there is a continuing pattern of less than 25 percent of the renewable fuel pool being used in either summer or winter periods. If so, then EPA is required to promulgate regulations establishing a requirement for such minimum seasonal use of renewable fuel. The Act also provides for several kinds of waivers, including one for the initial year of the program in which the Department of Energy (DOE) may recommend that EPA waive

[1] Regulatory provisions promulgated by the Agency must also contain provisions allowing exempted small refineries to opt into the RFS program.

the RFS program in whole or in part. Another general waiver provision authorizes EPA to waive the program in whole or in part in response to a petition by a state or states.

Thus, the long-term RFS program envisioned in the Act presents many complex and varied implementation issues. There are a large number of parties that could potentially be affected by the program, including the parties in the gasoline and renewable fuels production and distribution systems. Credit generation, trading and use will be an integral aspect of the program, and this credit program presents many unique issues to address, as most of the blending and use of renewable fuels occurs by parties separate and distinct from the gasoline producers. Limited discussions with stakeholders have served to highlight the complexity. Because of the many disparate interests involved and the large potential impacts of the program, EPA wants to make sure that development of the long-term RFS program is done thoughtfully and with broad stakeholder involvement. In addition, significant actions such as this require us to perform analyses of cost, feasibility, emission inventory impacts, air quality, and impacts on small businesses. Consequently, EPA does not believe that it can meet the August 8, 2006 statutory deadline to issue final comprehensive regulations implementing the full program.

B. What Is The Default Standard for 2006?

If EPA fails to publish final regulations establishing the full RFS program by August 8, 2006, Section 211(o)(2)(a)(iv) of the amended Clean Air Act provides that ''* * * the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 2.78 percent for calendar year 2006.'' However, the provision provides no details on how this requirement is to be implemented.

For instance, the default standard provision does not identify what parties are subject to this statutory requirement. There is a large network of refiners, importers, blenders, distributors, and retailers who arguably could be held responsible to meet this requirement. The statutory language also does not indicate whether the default standard is to be applied to each gallon of gasoline sold or dispensed in 2006, if it is to represent the annual average renewable fuel content for the gasoline sold or dispensed by each responsible party, or if instead it is to be an annual average for all parties acting collectively in the fuel production and distribution system.

Another aspect of the statutory language regarding the default standard that makes its implementation problematic is the absence of any explicit discussion of credit trading. Since producers of gasoline are generally not directly involved in the blending of renewable fuels, credit trading will be a critical component of the comprehensive RFS program. Without credit trading, if each party was individually liable to meet the default standard for their own gasoline, then a liable party would need to ensure that the gasoline it produces actually contains a minimum of 2.78 percent renewable fuel. This would be inconsistent with the direction provided in the Act for the long-term RFS program.

Finally, both the default standard and the annual standard to be met under the long-term program are expressed in the statute in terms of percent renewable fuel in gasoline. Although the definition of renewable fuel includes biodiesel, this particular renewable fuel is not blended into gasoline. While the long-term program will allow for biodiesel integration in the program through credit trading, the default standard provision does not specify the manner in which use of biodiesel is to be counted towards compliance. However, for the purposes of this rule we believe it is appropriate to include biodiesel in the pool of renewable fuel used to determine compliance with the default standard.

C. What Happens if EPA Does Not Promulgate Default Regulations for 2006?

The statutory language regarding the default standard for 2006 is ambiguous and problematic in several respects. As a result, starting in January 2006 there could be a great deal of uncertainty among parties whose business involves gasoline or renewable fuels if the Agency does not provide clarity. These parties will not know whether they are liable for the default standard, and if they are liable how to comply with it. The concern over potential individual liability and the lack of a credit trading program could lead some parties to attempt to procure and blend renewable fuels themselves, when under normal circumstances the logistics and economics of doing so would make such activities prohibitive. Others might attempt to ensure that every gallon of gasoline contains at least 2.78 percent renewable fuel. Still others could ignore the requirement entirely in the absence of explicit descriptions of how the Agency would enforce it. All of these activities could significantly disrupt the supply and distribution system, potentially resulting in local supply shortages and/or price spikes, and yet provide no assurance that the desired amount of renewable fuel will be blended into gasoline.

Due to these concerns, the Agency has determined that it would be in the public interest, and would further the goals of the Act, to issue regulations interpreting and clarifying liability, the mechanism of compliance, and the role of credit trading under the 2006 default standard.

III. Collective Renewable Fuel Use and the Default Standard

This section describes our reasons for believing that a collective compliance approach is a reasonable interpretation of the default standard for the RFS program. We also describe our reasons for believing that the default standard of 2.78 percent will be met in 2006 despite the absence of an RFS standard applicable to individual parties in the fuel production and distribution system.

A. Liability Under The Default Standard

1. Who should be liable?

EPA will identify parties who produce or import gasoline as the parties responsible for implementing the renewable fuel standard for 2006, including refiners, blenders, and importers, with an exemption for refiners that own only small refineries. The default provision itself is ambiguous with respect to liable parties, and could be interpreted as placing ultimate responsibility on a variety of parties in the gasoline production and distribution system, including the retailers who dispense gasoline to consumers. With respect to the long-term renewable fuel program, Congress directed EPA to establish regulations that make the renewable fuel obligation applicable to ''refineries, blenders and importers, as appropriate,'' [see Clean Air Act section 211(o)(2)(A)(iii)(I)], with an exemption until 2011 for ''small refineries'' [see Clean Air Act section 211(o)(9)(A)(i)]. Our interpretation of the default standard for 2006 is consistent with these statutory provisions for the long-term renewable fuel program.

EPA believes that refiners, blenders and importers are best positioned to ensure that an appropriate amount of renewable fuel is added to gasoline. Our regulation identifies blenders as a subset of refiners, consistent with our regulatory definition of ''refiner'' at 40

CFR 80.2(i).[2] In addition, EPA believes that retailers are not in the best position to guarantee the renewable fuel content of the gasoline they sell, and placing this responsibility on the many thousands of retailers, many of whom are small businesses, would likely be very burdensome for them and economically disruptive.

2. What is collective liability?

EPA is interpreting the default provision for 2006 as imposing a collective obligation on the regulated parties. This means that if the average volume percent of renewable fuel used in 2006 meets or exceeds 2.78 percent, then the standard is satisfied for all responsible parties, regardless of their individual efforts towards that goal. In light of the fact that industry on average will very likely use more than 2.78 percent renewable fuel in 2006 based solely on market forces (see further discussion below), EPA does not believe that it is necessary or appropriate to interpret the default standard for 2006 as imposing any greater degree of individual responsibility for liable parties. Such a system would require complex credit trading, recordkeeping, and reporting provisions that are not consistent with a default standard that Congress envisioned going into effect without a detailed regulatory program.

EPA is confident that this approach will achieve the statutory objective of ensuring that 2.78 percent of gasoline sold in the United States in 2006 will be renewable fuel, and it will do so in an efficient manner that minimizes costs to industry and consumers. In the unlikely event that EPA's projections of renewable fuel use in 2006 prove inaccurate and the default standard is not met, EPA will adjust the volume obligation for industry in 2007 to reflect any volume deficit represented by the difference between the actual renewable fuel volume percentage in 2006 and 2.78 percent. This effectively means that if there is a deficit in renewable fuel use in 2006, that the applicable percent standard for 2007 could be higher than it would otherwise be. This deficit carryover provision is similar in concept to the provision required for the long-term renewable-fuel program, to allow individuals that cannot satisfy their renewable fuel obligation in a given year to fulfill any deficit in a subsequent year. See Clean Air Act (CAA) Section 211(o)(5)(D).

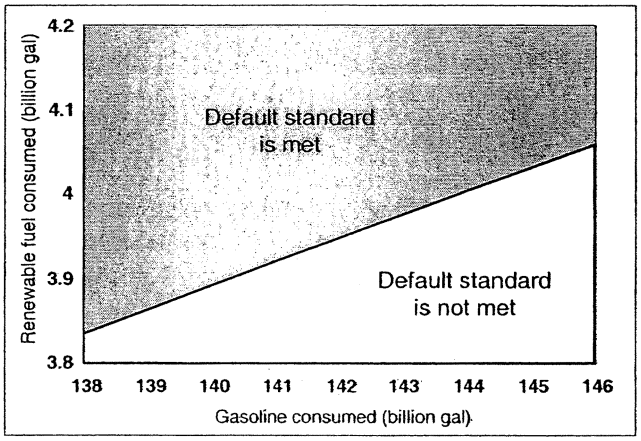
Thus under today's approach to compliance with the default standard, individual parties will still be considered to be in compliance even if they themselves blended little or no renewables, so long as the 2.78 percent requirement is met collectively nationwide in 2006. The carryover of any volume deficit will ensure that compliance with the default standard is ultimately achieved.

B. Why We Believe That The Default Standard Will Be Met Collectively

In implementing a collective compliance approach to meeting the default standard in 2006, we are doing so with the expectation that normal business practices will actually result in the default standard being met. While we are including a deficit carryover provision to address the possibility of a failure to meet the default standard in 2006, we have high confidence that such a provision would not have to be used. This section provides our reasons for believing that the default standard of 2.78 percent will be met in 2006 through existing market forces.

Although the full RFS program specifies that EPA should set a percentage standard designed to ensure use of a renewable volume of at least 4.0 billion gallons, the provision describing the default standard directly sets the percentage as 2.78 percent and makes no reference to this volume. As a result, the actual volume of renewable fuel used in gasoline in 2006 could be greater than or less than 4.0 billion gallons when the default standard of 2.78 percent is met. This potential result is illustrated in Figure III.B–1, where the shaded region represents cases in which the default standard of 2.78 percent has been met.

Figure III.B-1: Impacts of gasoline consumption volumes on renewable fuel volumes under the default standard



A recent projection of the total gasoline consumption volume for 2006 is 141.6 billion gallons.[3] With this gasoline volume, 3.94 billion gallons of renewable fuel would need to be consumed in order for the default standard of 2.78 percent to be met. For simplicity we have focused in this section on our reasons for believing that

[2] Parties whose only activity involves adding oxygenates to gasoline would not be considered refiners under this definition.

[3] EIA Short-Term Energy Outlook, October 2005.

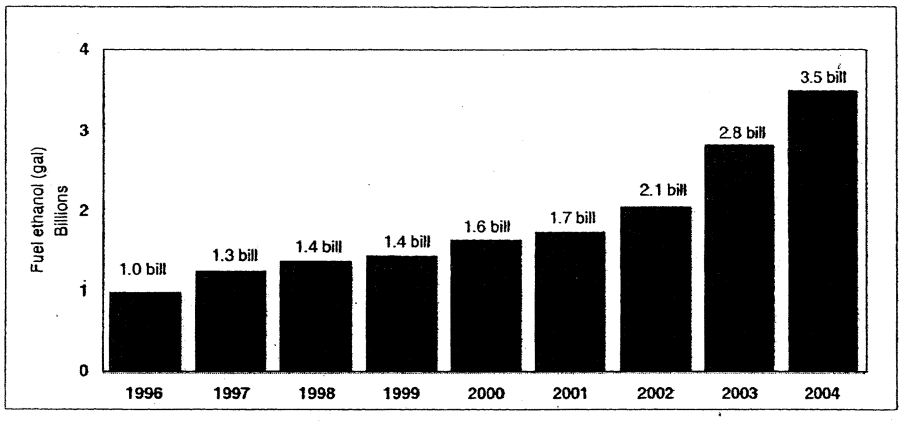
at least 4.0 billion gallons of renewable fuel will be sold in 2006.

Of all the renewable fuels that may play a role in meeting the default standard in 2006, ethanol is by far expected to represent the largest fraction. Therefore, our reasons for believing that at least 4.0 billion gallons of renewable fuel will be blended into gasoline in 2006 are based primarily on expectations regarding the production and sale of ethanol. Biodiesel volumes are also quickly rising and serve to provide added assurance that the default standard will be met in 2006. The recent excise tax credit for biodiesel and its value as a lubricity agent in ultra-low sulfur diesel also add to the attractiveness of biodiesel.

There are a variety of sources of information strongly suggesting that ethanol volumes will exceed 4.0 billion gallons in 2006. These include recent production trends, evaluations of expanding ethanol production capacity, and analyses of future demand. Each of these information sources is discussed in this section.

For instance, recent trends indicate that fuel-grade ethanol consumption has steadily increased since it was first introduced into the gasoline market in the early 1980's. The most recent consumption levels are shown in Figure III.B–2.

Figure III.B-2: Recent ethanol consumption volumes



Source: EIA Monthly Energy Review, Table 10.1

Some of the recent growth in ethanol consumption appears to have resulted from state bans on the use of the gasoline additive methyl tertiary butyl ether (MTBE). For areas required to use reformulated gasoline (RFG), ethanol often represents the most cost-efficient alternative to MTBE to meet the current RFG oxygen mandate.[4] State bans on MTBE went into effect in 2004 for California, New York, and Connecticut, where approximately one-third of all RFG is sold. The amount of ethanol sold in these three states increased by approximately 1 billion gallons between 2002 and 2004. But ethanol use has increased steadily over the last five years in other RFG areas and in conventional gasoline as well for reasons not associated with MTBE bans. We believe that these increases in ethanol use are due primarily to the beneficial economics of blending ethanol into gasoline as gasoline prices have risen. If the market forces that led to the rising demand for ethanol over the last several years continue into the future, ethanol consumption could easily reach 4.0 billion gallons in 2006.[5]

In addition to ethanol consumption trends, import trends also suggest that supply of ethanol will increase into 2006. According to EIA, imports of ethanol increased significantly in 2004, totaling nearly 150 million gallons.[6] This volume represents a more than ten-fold increase from each of the previous two years.

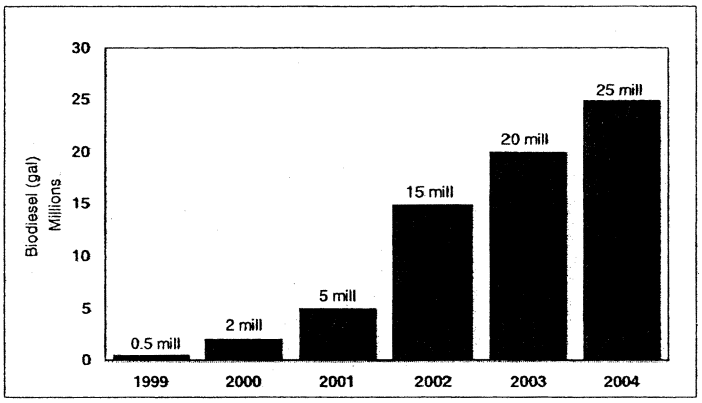
Biodiesel production has also risen significantly in the last several years, and further supports our belief that total renewable fuel volumes in 2006 will exceed 4.0 billion gallons. Figure III.B–3 shows the volumes of biodiesel production in the U.S. in recent years.

[4] The Energy Act contains a provision requiring the Agency to promulgate regulations eliminating the oxygen mandate for RFG by May 5, 2006.

[5] Data from EIA's Monthly Energy Review indicates that ethanol production in the first half of 2005 was 6.8% higher than the same period in 2004. Extrapolated through 2006, this trend would result in just over 4.0 billion gallons produced in 2006.

[6] Petroleum Supply Annual 2004, vol. 2. Table 20.

Figure III.B-3: Recent biodiesel production volumes



Source: National Biodiesel Board

If the trends shown in Figure III.B–3 continue into 2006, there could be as much as 35 million gallons of biodiesel produced. If the ethanol import volumes of 150 million gallons per year continue into 2006, then an additional total of nearly 0.2 billion gallons of renewable fuel may be consumed in the U.S. in 2006 in addition to the ethanol production estimates. Thus the total projected volume of renewable fuel consumed in 2006 would be about 4.2 billion gallons instead of the 4.0 billion gallons we estimated above.

An evaluation of expanding ethanol production capacity also points towards 2006 ethanol volumes easily exceeding 4 billion gallons. For instance, Table III.B–1 shows data from the Renewable Fuels Association for existing and underway ethanol production capacity in the U.S. for the past several years.[7]

TABLE III.B–1.—U.S. ETHANOL PRODUCTION CAPACITY

	Number of production plants		Production capacity (million gal per year)	
	Existing	Underway	Existing	Underway
2003 (December)	72	15	3,101	598
2004 (December)	81	16	3,644	754
2005 (October)	89	21	4,159	1,249

The average new ethanol plant or plant expansion takes about 14 months to complete, though the time required can range from a few months to over two years.[8] Based on target construction completion dates in Ethanol Producer Magazine, we estimate that, of the 1,249 mgpy of production capacity underway as of October of 2005, 232 mgpy will be online by the end of 2005. At least another 895 mgpy will be online sometime in 2006. However, accounting for the fact that different facilities will come online at different points throughout 2006, the total annual increase in capacity will be roughly 352 mgpy. The total amount of ethanol production capacity for 2006 is thus expected to be 4,743 mgpy. Actual ethanol production has historically been a very large fraction of production capacity as demand increased, generally exceeding ninety percent. As a result these figures strongly suggest that production in 2006 is very likely to be greater than 4 billion gallons.

Two other analyses support our expectation that 2006 ethanol production volumes will exceed 4 billion gallons. The EIA made its own projections of ethanol production in 2006 using its National Energy Modeling System, an annual forecasting tool.[9] In addition to evaluating various versions of the RFS program prior to enactment of the Energy Policy Act of 2005, the EIA also modeled a case in which no RFS program existed. In that event, EIA projected that total annual ethanol consumption in 2006 would be 4.6 billion gallons.

The U.S. Department of Agriculture has also made projections of ethanol production under a scenario in which no RFS program is assumed. Their most recent ''Baseline Projections'' apply to all years between 2006 and 2014, and are based on an analysis of the major forces and uncertainties affecting future agricultural markets.[10] This analysis included such factors as trade, farm income, food prices, weather, international developments, and other macroeconomic conditions affecting the production of corn and other crops used for the production of ethanol. In association with this analysis, total ethanol production in 2006 was projected to be 4.18 billion gallons. Again, considering ethanol imports and biodiesel production, actual renewable

[7] 2003 source: Ethanol Industry Outlook 2004, RFA, February 2004. 2004 source: Ethanol Industry Outlook 2005, RFA, February 2005. 2005 source: ''U.S. Fuel Ethanol Production Capacity'', Renewable Fuels Association. Update September 2005. *http://www.ethanolrfa/eth_prod_fac.html.*

[8] ''Ethanol Plant Construction'', Ethanol Producer Magazine, October 2005. Page 30.

[9] ''Renewable Fuels Legislation Impact Analysis'', Energy Information Administration, July 2005. *http://www.eia.doe.gov/oiaf/servicerpt/jeffords/.*

[10] ''USDA Agricultural Baseline Projections to 2014,'' February 2005 (OCE–2005–1).

fuel consumption could be as high as 4.4 billion gallons in this scenario.

There are other important, though less quantitative, indicators of growth in the ethanol industry. For instance, in response to increasing trading volume, the Chicago Board of Trade recently announced that it is expanding the number of ethanol futures contracts available.[11] Also, the New York Mercantile Exchange will now offer a New York Harbor ethanol blendstock (RBOB) gasoline futures contract that will replace the MTBE-blended gasoline based contract.

In addition to simple volume projections from past years, we also believe that ethanol production will exceed 4 billion gallons in 2006 due to the favorable economics currently associated with it. Historically the 51 ¢/gal federal excise tax credit and various state and local credits have provided sufficient economic incentive to overcome the higher production costs of ethanol compared to the production costs of the gasoline it displaces. As a result, demand for ethanol has steadily increased over the years, aided by the RFG oxy mandate and state MTBE bans. However, the increase in crude oil prices in recent years has dramatically increased the production cost of gasoline. Although the price of natural gas used in ethanol production has also risen in recent years, ethanol production costs have remained relatively stable in comparison to gasoline and thus the economic incentive to blend ethanol into gasoline has risen significantly. A similar incentive also now exists for biodiesel in the wake of its recently enacted excise tax subsidy. As long as crude prices remain high, this incentive to blend ethanol and biodiesel into conventional fuels is anticipated to continue. Other factors that have historically been important such as octane, and even the RFG oxygen mandate, are expected to be much less important in 2006. Ethanol's value simply as a extender for gasoline volume is sufficient to keep demand high. Also, with refineries operating at or near capacity and the demand for gasoline increasing in the U.S., the phaseout of MTBE could result in a potential reduction of gasoline volume. We expect that many refiners will use ethanol to replace the lost octane and volume associated with the phaseout of MTBE.

As a result of these favorable economics, despite the removal of the oxy mandate for RFG as required by the Act, we do not anticipate any overall reduction in demand for ethanol next year. The Act provides for immediate elimination in California of the statutory requirement for oxygen in RFG, and 270 days after enactment for the rest of the country.[12] Although the elimination of the oxygen requirement has the potential to reduce ethanol use in some RFG areas, given the strong economic incentive to blend ethanol, its use is expected to rise in others, offsetting any impact. State-mandated ethanol requirements will only solidify this conclusion. Currently, three states mandate the use of ethanol in all gasoline through a state renewable fuels standard: Minnesota, Hawaii, and Montana. Other states may follow in the future—currently state legislators in Illinois, Missouri and Michigan have been discussing introducing similar legislation in those states.

IV. Program Description for 2006

For calendar year 2006, we are promulgating a collective approach to compliance that implements the default 2.78 percent standard. This section describes our 2006 program in detail, including the definition of liable parties under the standard and the mechanism for addressing any potential failure to meet the 2.78 percent collectively

A. Liable Parties

For calendar year 2006, the Act states that if EPA fails to issue comprehensive regulations establishing the renewable fuel program then ''the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States on a volume basis, shall be 2.78 percent for calendar year 2006.'' The default standard goes into effect independently; that is, no regulations are required to implement the default standard. EPA believes, however, that regulations are nevertheless necessary to clarify how the standard is to be interpreted and implemented.

While the Act provides that the renewable fuel obligation determined pursuant to the long-term RFS program shall ''be applicable to refineries, blenders, and importers, as appropriate,'' the Act does not provide this level of specificity for the default RFS standard for 2006. We have determined that compliance with the default standard will be determined based on the efforts of the collective refining, importing and blending industries. Small refineries will be excluded from liability in the 2006 collective compliance determination. However, since the statutory language regarding the default standard indicates that compliance should be based on gasoline sold or dispensed to consumers in the United States, the gasoline produced by small refiners as well as the ethanol used in gasoline produced by small refineries will be counted in performing the compliance calculations.

The regulations will provide that refiners, blenders and importers have collectively met the standard if the volume of renewable fuels used in gasoline sold in the U.S. in calendar year 2006 is equal to or greater than 2.78 percent. Thus if the standard is achieved collectively, then every individual refiner, blender or importer will be in compliance with the standard. This means that an individual refiner may use less than 2.78 percent in the gasoline it refines, imports or blends, but will not be in violation of the standard as long as the 2.78 percent is met or exceeded in the aggregate by all parties in these industries. If the 2.78 percent default standard is not met collectively, then our regulations provide for a deficit carryover to 2007 that would apply collectively to all liable parties in 2007. There will be no other consequence for collective failure to meet the 2.78 percent standard in 2006.

B. How Will Compliance Be Determined?

This section describes the activities that will be required of liable parties under the default standard, the types of renewable fuels that will be counted, and the mechanism through which the Agency will determine compliance with the default standard for 2006.

1. Activities Required of Liable Parties

For the collective compliance determination, EPA will calculate the actual volume percent of renewable fuel for 2006 using gasoline and ethanol consumption volumes reported by EIA for 2006, supplemented by readily available information on consumption volumes for other renewable fuels. Thus, individual refiners, importers and blenders will not be required to demonstrate compliance with the default standard. EPA will evaluate whether the default standard has been met collectively by use of readily available information. Individual companies will not be required to keep records of volumes of ethanol purchased for purposes of compliance with this rule.

[11] Renewable Fuel News, Hart Energy Publishing. September 26, 2005. Page 4.

[12] Although the Act provides for the elimination of oxygen from RFG, EPA is still required to revise the appropriate sections of the CFR to allow RFG without oxygen to be sold. For purposes of this analysis, we are assuming that such regulatory revision would occur no later than March, 2006 for California, and by May, 2006 (i.e., by 270 days from enactment) for the rest of the U.S. We expect to put out a rule in early 2006 addressing this issue.

2. Renewable Fuels Accounting for Compliance Purposes

Under our regulations, EPA will calculate the total volume of renewable fuel to account for all ethanol and non-ethanol renewable fuels used in motor fuel in 2006, including ethanol made from cellulosic or waste feedstocks and biodiesel. We will use information on the volumes of these renewable fuels that can be obtained from available sources. We will count one gallon of cellulosic biomass or waste-derived ethanol as 2.5 gallons of renewable fuel, following the prescription in Section 211(o)(4) of the Clean Air Act as amended by the Energy Policy Act of 2005.

Although the statutory language regarding the default standard indicates that compliance should be based on renewable fuel in gasoline, we believe that biodiesel should also be included even though it is not blended into gasoline. Not only is biodiesel included within the definition of renewable fuel, but in the context of the long-term RFS program biodiesel can be counted as a component of the renewable fuel pool for use in compliance calculations even though the RFS standard is also based on the percentage use of renewable fuel in gasoline. We will count one gallon of biodiesel as one gallon of renewable fuel in the context of 2006 compliance with the default standard. We will revisit the credit value of biodiesel and other renewable fuels in the context of the comprehensive rulemaking implementing the full RFS program, and our approach in this rulemaking is not intended to establish a precedent for our decision there.

3. EPA Determination of Collective Compliance With the Default Standard

Our regulations provide that the default standard has been met if the volume percent of renewable fuel used in gasoline sold in the U.S. in 2006 is collectively greater than or equal to 2.78 percent. While small refineries are not considered liable parties under the collective compliance approach, we will include the volume of gasoline produced by small refineries as well as the amount of ethanol used in such gasoline in determining whether the 2.78 percent default standard has been met. We believe that including volumes of gasoline and ethanol from small refiners is consistent with the plain language of the default standard, which calls for 2.78 percent renewable fuel in ''gasoline sold or dispensed to consumers.''

We will primarily use data published by EIA in determining compliance with the default standard. We have identified the Monthly Energy Review as the most appropriate source.[13] Ethanol is available in Table 10.1,[14] while gasoline volumes are available under ''Product Supplied'' in Table 3.4. Volumes of other renewable fuels that may not be available through EIA publications will be estimated based on information from other readily available and reliable sources.

If the default standard has been met on a collective basis, all refiners, importers and blenders will be deemed to be in compliance whether or not they individually used 2.78 percent ethanol in gasoline. If the default standard has not been met on a collective basis, we will carry forward an appropriate volume of renewable fuel to the 2007 volume obligation which will then be implemented and enforced under the full RFS rule. The additional renewable fuel that is carried forward is termed the ''deficit carryover''. In such an instance, no individual refiner, blender or importer is held liable for the default 2006 standard not being met. Rather, the RFS standard for 2007 will be adjusted to account for any deficit carryover.

Today's rule will provide that a deficit carryover will be required if the 2.78 percent standard is not met. The size of the deficit will be determined with respect to the 2.78 percent default standard. As a result, the minimum necessary volume of renewable fuel consumed in 2006 and the size of any deficit carryover volume will be dependent upon the volume of gasoline consumed. The following examples illustrate how the standard will work, and how the deficit carryover will be calculated.

(A) Renewable volume percent is greater than 2.78%:

Actual 2006 gasoline volume: 136.8 bill gal
Actual 2006 renewable volume: 3.90 bill gal
Calculated percent: Actual renewable volume/actual gasoline volume = 3.9/136.8 = 2.85%
Result: Standard has been met; no deficit carryover to 2007

(B) Renewable volume percent is less than 2.78%:

Actual 2006 gasoline volume: 139.8 bill gal
Actual 2006 renewable volume: 3.8 bill gal
Calculated percent: Actual renewable volume/actual gasoline volume = 3.8/139.8 = 2.72%
Result: Standard has not been met. Amount of renewable fuel needed to achieve 2.78%: (2.78% − 2.72%) × (actual gasoline used) = 0.06% × 139.8 bill gallon = 0.08 billion gallons. The 0.08 billion gallons is added to the RFS goal for 2007, resulting in a modified goal of 4.78 billion gal/yr of renewable fuel

Although the Act requires EPA to publish the standard applicable to 2007 by November 30, 2006, the data on actual gasoline and renewable fuel volumes consumed in all of 2006 will not be available at that time. As a result, the addition of any deficit carryover to 2007, if one is necessary, could occur no sooner than early 2007. Under these circumstances, we expect that we will adjust the 2007 standard to account for a carryover from 2006, if necessary, at such time as the data for 2006 are available and in a manner consistent with the regulations that will apply to 2007.

C. No Role for Credit Trading

The Act provides for the regulations implementing the long term RFS to allow for credit generation and trading, and we will develop a credit trading program under the full RFS program rule. Today's rule allows for the industry to comply with the default standard on a collective basis, providing no basis for setting set up an individual credit generation and trading program, as will be done for the long term RFS program. For the default standard in 2006, companies do not have an individual standard to meet, so there is no basis for determining that they have done more or less than is required of them individually, which is the basis for generating or needing credits. Therefore, under today's rule, individual companies that exceed the 2.78 percent default standard do not generate credits, and there are no credits to trade or sell to other companies. Also, no credits are generated that can be used toward compliance with RFS requirements after 2006.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 **Federal Register** 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

[13] The Monthly Energy Review for March 2007 is expected to contain data through December 2006.

[14] Fuel ethanol consumption in trillion Btu must be converted into gallons using the higher heating value of 3.539 million Btu per barrel, per Table A1.

(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.''

It has been determined that this rule will not have an annual effect on the economy of $100 million or more, and that it is not otherwise a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA has estimated that renewable fuel use in 2006 will be sufficient to meet the default standard of 2.78 percent. Therefore, individual refiners, blenders, and importers are already on track to meet rule obligations through normal market-driven incentives.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There would not be a burden on liable parties because the Agency would determine compliance immediately following 2006 using data on gasoline and renewable fuel consumption available from the Energy Information Administration and other information that may be readily available.

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 (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA proposes that the default provision for 2006 be interpreted as imposing a collective obligation on the regulated parties. This means that if the average volume percent of renewable fuel used in 2006 meets or exceeds 2.78 percent, then the standard is satisfied for all responsible parties, regardless of their individual efforts towards that goal. In light of the fact that refiners, blenders, and importers would together be responsible for meeting the default 2.78 percent standard and industry on average will very likely use more than 2.78 percent renewable fuel in 2006 based solely on market forces, there will be no significant economic impact on small entities. No individual refiner, blender, or importer would be responsible for establishing compliance with the default standard for the specific gasoline it produces in 2006, and any deficit carryover to 2007 would be minimal if there is one at all. We continue to be interested in the potential impacts of our proposed rules on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. EPA has estimated that renewable fuel use in 2006 will be sufficient to meet the default standard of 2.78 percent. Therefore, individual refiners, blenders, and importers are

already on track to meet rule obligations through normal market-driven incentives. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule reflects a nationwide program that does not impose directives specific to any particular State or region. Thus, Executive Order 13132 does not apply to this 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 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications as specified in Executive Order 13175. This rule would be implemented at the Federal level and collectively apply to refiners, blenders, and importers. EPA expects these entities to meet the standards on a collective basis in 2006 even without imposition of any RFS obligations on any individual party. 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: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is not economically significant and is not based on health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We believe that the normal practices of liable parties will result in the default RFS standard being met collectively.

I. National Technology Transfer Advancement Act

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

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

J. 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 February 28, 2006.

VI. Legal Authority

Statutory authority for the rules finalized today can be found in 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Reporting and recordkeeping requirements.

Dated: December 22, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, we amend part 80 of title 40 of the Code of Federal Regulations to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

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

Subpart K—Renewable Fuel Standard

§ 80.1100 How is the statutory default requirement for 2006 implemented?

(a) *Definitions.* (1) *Renewable fuel.* (i) Renewable fuel means motor vehicle fuel that is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle, and which:

(A) Is produced from grain, starch, oil seeds, vegetable, animal, or fish materials including fats, greases, and oils, sugarcane, sugar beets, sugar components, tobacco, potatoes, or other biomass, or

(B) Is natural gas produced from a biogas source, including a landfill,

sewage waste treatment plant, feedlot, or other place where decaying organic material is found.

(ii) The term ''renewable fuel'' includes cellulosic biomass ethanol, waste derived ethanol, biodiesel, and any blending components derived from renewable fuel.

(2) *Cellulosic biomass ethanol* means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste. The term also includes any ethanol produced in facilities where animal wastes or other waste materials are digested or otherwise used to displace 90 percent or more of the fossil fuel normally used in the production of ethanol.

(3) *Waste derived ethanol* means ethanol derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste.

(4) *Small refinery* means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(5) *Biodiesel* means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel derived from animal wastes (including poultry fats and poultry wastes) and other waste materials, or biodiesel derived from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.

(b) *Renewable Fuel Standard for 2006.* The percentage of renewable fuel in the total volume of gasoline sold or dispensed to consumers in 2006 in the United States shall be a minimum of 2.78 percent on an annual average volume basis.

(c) *Responsible parties.* Parties collectively responsible for attainment of the standard in paragraph (b) of this section are refiners (including blenders) and importers of gasoline. However, a party that is a refiner only because he owns or operates a small refinery is exempt from this responsibility.

(d) *EPA determination of attainment.* EPA will determine after the close of 2006 whether or not the requirement in paragraph (b) of this section has been met. EPA will base this determination on information routinely published by the Energy Information Administration on the annual domestic volume of gasoline sold or dispensed to U.S. consumers and of ethanol produced for use in such gasoline, supplemented by readily available information concerning the use in motor fuel of other renewable fuels such as cellulosic biomass ethanol, waste derived ethanol, biodiesel, and other non-ethanol renewable fuels.

(1) The renewable fuel volume will equal the sum of all renewable fuel volumes used in motor fuel, provided that:

(i) One gallon of cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel; and

(ii) Only the renewable fuel portion of blending components derived from renewable fuel shall be counted towards the renewable fuel volume.

(2) If the nationwide average volume percent of renewable fuel in gasoline in 2006 is equal to or greater than the standard in paragraph (b) of this section, the standard has been met.

(e) *Consequence of nonattainment in 2006.* In the event that EPA determines that the requirement in paragraph (b) of this section has not been attained in 2006, a deficit carryover volume shall be added to the renewable fuel volume obligation for 2007 for use in calculating the standard applicable to gasoline in 2007.

(1) The deficit carryover volume shall be calculated as follows:

$$DC = V_{gas} \bullet (R_s - R_a)$$

Where:

DC = Deficit carryover in gallons of renewable fuel.

V_{gas} = Volume of gasoline sold or dispensed to U.S. consumers in 2006, in gallons.

R_s = 0.0278.

R_a = Ratio of renewable fuel volume divided by total gasoline volume determined in accordance with paragraph (d)(2) of this section.

(2) There shall be no other consequence of failure to attain the standard in paragraph (b) of this section in 2006 for any of the parties in paragraph (c) of this section.

[FR Doc. 05–24611 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2004–18075]

RIN 2127–AJ79

Anthropomorphic Test Devices; Hybrid III 6-year-old Weighted Child Test Dummy

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

ACTION: Final rule, response to petition for reconsideration.

SUMMARY: This notice responds to a petition submitted by First Technology Safety Systems (FTSS) asking the agency to reconsider several aspects of a July 16, 2004 final rule that added a new subpart S to 49 CFR part 572. Subpart S specifies a Hybrid III 6-year-old weighted child test dummy. The agency is granting the petition in part and denying it in part.

DATES: This final rule is effective January 30, 2006. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the **Federal Register** as of January 30, 2006. Petitions for reconsideration must be received no later than 45 days after the date of publication and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Sean Doyle, NHTSA Office of Crashworthiness Standards. Telephone: (202) 366–1740. Facsimile: (202) 493–2739.

For legal issues: Ms. Deirdre Fujita, NHTSA Office of Chief Counsel. Telephone: (202) 366–2992. Facsimile: (202) 366–3820.

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On July 16, 2004, NHTSA published a final rule that amended 49 CFR part 572 by adding a new subpart S describing a weighted version of the current Hybrid III 6-year-old child size (HIII–6C) dummy (69 FR 42595; NHTSA Docket 18075). The weighted dummy is used in Federal Motor Vehicle Safety Standard (FMVSS) No. 213 (49 CFR 571.213) to

test the structural integrity of child restraints, manufactured on or after August 1, 2005, that are recommended for use by children weighing 50 to 65 lb.

FTSS petitioned for reconsideration of the following aspects of the final rule: the force corridor for the thorax impact certification test, and the average force at 45 degrees for the torso flexion certification test; the material specification on drawing number 167–2020 and the weight tolerances on that drawing; and the material specification on drawing number 167–3010 and the weight tolerances on that drawing. Each of these is discussed below.

(a) The Force Corridor for the Thorax Impact Certification Test, and the Average Force at 45 Degrees for the Torso Flexion Certification Test

FTSS provided the results for six additional thorax impact tests using a Hybrid III 6-Year-Old Weighted Child Test Dummy (HIII–6CW). The petition requested that the agency ''pool this data with the existing data to produce a larger sample size to calculate the average peak pendulum force corridor and modify the rule accordingly.'' (The data are provided in Table 1 of the Appendix to this document.)

FTSS also provided an additional seventeen torso flexion response tests. FTSS again requested that these ''additional test data be pooled with the existing agency data to calculate the appropriate average Force at 45 degrees.''

NHTSA is denying the first suggested amendment concerning the thorax impact certification test, but is granting the request to adjust the torso flexion test corridor.

Thorax Impact Test

In its petition, FTSS provided the results from six additional thorax impact tests using a HIII–6CW. The petition requested that the agency ''pool this data with the existing data to produce a larger sample size to calculate the average peak pendulum force corridor and modify the rule accordingly.'' (The data are provided in Table 1 of the Appendix to this document.)

NHTSA analyzed the FTSS data from the thorax impact tests and performed a statistical analysis with the additional data points, comparing it to the data set published in the final rule. It was observed that with these additional 6 FTSS data points, the average peak pendulum force would decrease by only 3.7 Newtons (N). The data set used in the final rule produced an average peak pendulum force of 1,321.6 N. When combined with the FTSS data, the average peak pendulum force is 1,317.9 N, or a decrease of only 0.27% in the average peak force.

NHTSA is denying the request to modify the peak pendulum force corridor. FTSS did not show how changing the average peak force by 0.27% would have any effect on dummy performance. Furthermore, all the tests provided by FTSS fell comfortably within the final rule corridor of 1,205–1,435 N. Accordingly, the agency does not believe that the peak force corridor needs to be changed at this point in time.

Torso Flexion Test

With regard to the additional torso flexion response data (see Table 2 of the Appendix), the FTSS data, combined with the data set published in the final rule, results in an average force of 95.2 N at 45 degrees of flexion. This value is slightly higher than that of the value provided in the Hybrid III 6-year-old weighted child test dummy final rule, which provided an average force of 88.6 N at 45 degrees of flexion (49 CFR 572.165(b)(1)). The standard deviation of the combined data set would be reduced from the data set published in the final rule, 14.2 N compared to 15.6 N. If the new average responses were accepted and the same tolerance of +/- 20 N were applied, then the force at the 45-degree corridor would change from 68.6 N–108.6 N (as published in the final rule) to 72.5 N–112.5 N.

Such a change would reduce the number of samples that did not meet the corridor at the upper end of the limit from five failures to two failures out of the 29 total samples. However, making this change in the corridor would result in three other samples not meeting the new requirement at the low end of the limit (test numbers DATD–97–10, –11, and –12 would no longer pass the new requirement). FTSS provided data showing that the dummies used in their 13 tests met the requirements set forth in 49 CFR part 572, Subpart N (''Six-year-old child test dummy, beta version'') prior to adding the weights, indicating the overall acceptability of the dummies. After considering the available information, we have decided to adjust slightly the torso flexion test corridor from 88.6 N +/− 20 N to 88.6 N +/− 25 N. This slight adjustment in the torso flexion test corridor results in all 29 test samples being compliant with the torso flexion force at 45 degrees.

(b) The Material Specification on Drawing Number 167–2020 and the Weight Tolerances on That Drawing

FTSS noted that NHTSA drawing number 167–2020 specifies a material, Tungsten Alloy CMW 2000, which is a proprietary brand name of Contacts Metals Welding (CMW) Inc. FTSS requested the addition of ''or equivalent'' to the material specification ''to allow for use of alternate suppliers of Tungsten Alloy.'' FTSS also noted, ''NHTSA has specified the weight to be 2.54 lb, but has specified no tolerance.'' FTSS recommended applying a weight tolerance, which is computed by calculating the variance of the minimum and maximum dimensions and using the density of the Tungsten alloy. FTSS suggested a tolerance of +/− 0.11 lb.

NHTSA agrees that, with regard to the recommendation to add ''or equivalent'' to the currently specified Tungsten Alloy GMW 2000, it is not preferable to specify one specific source for the raw materials needed to produce this item. The agency will therefore add the word ''reference'' to the currently specified Tungsten Alloy GMW 2000 located in the material specification section of drawing 167–2020. NHTSA will use the word ''reference'' rather than ''or equivalent'' to maintain consistency with the material specification generally used in NHTSA drawings.

With regard to the recommendation to apply a weight tolerance to drawing 167–2020, the agency agrees that a weight tolerance is desirable and concurs with the approach FTSS has taken in calculating this tolerance. The agency confirmed FTSS's calculation and will change the weight note to read as follows: ''Weight: 2.54 +/− 0.11 lb.''

(c) The Material Specification on Drawing Number 167–3010 and the Weight Tolerances on That Drawing

FTSS stated that a proprietary material has also been specified in this drawing. FTSS again suggested that a generic material specification would be more desirable.

In addition, FTSS noted ''NHTSA has specified the weight to be 4.88 lbs, but has specified no tolerance.'' FTSS recommended applying a weight tolerance, which, similar to the approach taken above, was computed by calculating the variance of the minimum and maximum dimensions and using the density of the Tungsten alloy. FTSS suggested a tolerance of +/− 0.17 lb.

NHTSA agrees that a generic material specification is desirable. Therefore, the word ''reference'' will be added to the material specification in drawing number 167–3010. NHTSA further agrees that a weight tolerance is desirable and concurs with the approach suggested by the petitioner. Thus, the weight note on drawing number 167–3010 is changed to read: ''Weight: 4.88 +/− 0.17 lb.''

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. The agency concludes that the impacts of the amendments are so minimal that preparation of a full regulatory evaluation is not required. The rule will not impose any new requirements or costs on manufacturers, but instead will slightly widen the torso flexion test corridor as well as make minor changes to two drawings of the dummy.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The rule will not impose any new requirements or costs on manufacturers.

C. Paperwork Reduction Act

This document does not establish any new information collection requirements.

D. National Environmental Policy Act

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

E. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Civil Justice Reform

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The agency searched for, but did not find any voluntary consensus standards relevant to this response to FTSS's petition for reconsideration.

H. Unfunded Mandates Reform Act

This final rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Privacy Act Statement

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

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

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

PART 572—ANTHROPOMORPHIC TEST DUMMIES

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

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

■ 2. Section 572.160 is amended by revising paragraphs (a)(1)(iii) and (v) to read as follows:

Subpart S—Hybrid III Six-Year-Old Weighted Child Test Dummy

* * * * *

§ 572.160 Incorporation by reference.

* * *

(iii) Drawing No. 167–2020 Revision A, dated December 8, 2005, Spine Box Weight, incorporated by reference in §§ 572.161 and 572.165 as part of a complete dummy assembly;

* * *

(v) Drawing No. 167–3010 Revision A, dated December 8, 2005, Lumbar Weight Base, incorporated by reference in §§ 572.161 and 572.165 as part of a complete dummy assembly; and

* * * * *

■ 3. Section 572.161 is amended in paragraph (a) by revising Table A to read as follows:

§ 572.161 General description.

* * * * *

TABLE A

Component assembly [1]	Drawing No.
Complete assembly	167–0000.
Upper torso assembly	167–2000.
Spine box weight	167–2020 Rev. A.
Lower torso assembly	167–3000.
Lumbar weight base	167–3010 Rev. A.

[1] Head, neck, arm, and leg assemblies are as specified in 49 CFR 572 subpart N.

* * * * *

■ 4. Section 572.165 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 572.165 Upper and lower torso assemblies and torso flexion test procedure.

(a) *Upper/lower torso assembly.* The test objective is to determine the stiffness effects of the lumbar spine (specified in 49 CFR 572.125(a)),

including cable (specified in 49 CFR 572.125(a)), mounting plate insert (specified in 49 CFR 572.125(a)), nylon shoulder bushing (specified in 49 CFR 572.125(a)), nut (specified in 49 CFR 572.125(a)), spine box weighting plates (drawing 167–2020 Revision A), lumbar base weight (drawing 167–3010 Revision A), and abdominal insert (specified in 49 CFR 572.125(a)), on resistance to articulation between the upper torso assembly (drawing 167–2000) and the lower torso assembly (drawing 167–3000). Drawing Nos. 167–2000, 167–2020 Revision A, 167–3000, and 167–3010 Revision A, are incorporated by reference, see § 572.160.

(b)(1) When the upper torso assembly of a seated dummy is subjected to a force continuously applied at the head to neck pivot pin level through a rigidly attached adaptor bracket as shown in Figure S2 according to the test procedure set out in 49 CFR 572.125(c), the lumbar spine-abdomen assembly must flex by an amount that permits the upper torso assembly to translate in angular motion until the machined surface of the instrument cavity at the back of the thoracic spine box is at 45 ± 0.5 degrees relative to the transverse plane, at which time the force applied as shown in Figure S2 must be within 88.6 N ± 25 N (20.0 lbf ± 5.6 lbf), and

* * * * *

Issued on: December 22, 2005.

Jacqueline Glassman,

Deputy Administrator.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

BILLING CODE 4950–59–P

Table 1. Thorax impact test results for the HIII-6CW

Test ID	Dummy S/N	Test Date	Peak chest deflection (mm)	Peak Force 38 - 46mm (N)	Peak Force 12.5 - 38mm (N)	Hysteresis (%)	Comments
VRTC-4	108	7-Aug-01	40.7	1332	1405	77.6	
VRTC-5	108	7-Aug-01	39.8	1355	1435	77.7	
VRTC-6	108	7-Aug-01	40.3	1351	1430	76.9	
VRTC-7	108	7-Aug-01	41.2	1341	1413	76.8	
VRTC-8	108	27-Aug-01	41.0	1343	1407	76.6	
VRTC-9	108	28-Aug-01	40.6	1328	1386	77.1	
VRTC-10	108	28-Aug-01	40.7	1328	1391	76.8	
VRTC-11	108	24-Jan-02	43.5	1228	1222	75.3	new rib set
VRTC-A1	088	18-Oct-01	39.8	1388	1448	77.4	
VRTC-A2	088	24-Jan-02	40.3	1392	1405	75.9	
DATD-1			43.8	1259	1149	70.5	
DATD-2			43.9	1265	1234	68.3	
DATD-3			43.7	1271	1191	70.1	
FTSS-1		24-Jul-03	41.5	1350	1440	74.3	
FTSS-2		24-Jul-03	41.4	1340	1420	74.0	
FTSS-3		24-Jul-03	41.0	1370	1470	74.1	
FTSS-4		4-Aug-03	44.1	1260	1240	72.9	
FTSS-5		4-Aug-03	44.0	1250	1350	73.8	
FTSS-6		4-Aug-03	42.6	1290	1410	74.4	
NHTSA-108		avg	41.0	1325.8	1386.1	76.9	
		std. dev.	1.1	40.8	68.4	0.7	
		%CV	2.7	3.1	4.9	1.0	
NHTSA-088		avg	40.1	1390.0	1426.5	76.7	
		std. dev.	0.4	2.8	30.4	1.1	
		%CV	0.9	0.2	2.1	1.4	
DATD		avg	43.8	1265.0	1191.3	69.6	
		std. dev.	0.1	6.0	42.5	1.2	
		%CV	0.2	0.5	3.6	1.7	
FTSS		avg	42.4	1310.0	1388.3	73.9	
		std. dev.	1.4	50.2	82.8	0.5	
		%CV	3.2	3.8	6.0	0.7	
NHTSA + DATD		avg	41.5	1321.6	1347.4	75.2	
		std. dev.	1.6	50.7	106.0	3.2	
		%CV	3.9	3.8	7.9	4.3	
NHTSA + DATD + FTSS		avg	41.8	1317.9	1360.3	74.8	
		std. dev.	1.6	49.4	98.9	2.7	
		%CV	3.7	3.7	7.3	3.7	

Table 2. Combined Torso Flexion Response Data

Test Number	Test Date	Initial Angle (deg)	Force @ 45 degrees (Newtons)	Return Angle (deg)
VRTC-1	8/9/2001	30.7	100.5	4.1
VRTC-2	8/9/2001	33.4	101.0	4.2
VRTC-3	9/4/2001	30.1	105.0	5.1
VRTC-4	9/4/2001	30.7	100.5	4.1
VRTC-5	9/4/2001	30.2	110.3	6.5
VRTC-6	9/4/2001	31.9	101.0	4.3
DATD-97-10		27.9	69.0	8.3
DATD-97-11		27.9	70.0	8.7
DATD-97-12		28	72.0	8.3
DATD-98-4		27.3	79.0	7.4
DATD-98-5		29.3	80.0	5.4
DATD-98-6		29.4	75.0	5.8
FTSS-34972	7/24/2003	20.4	90.9	8.9
FTSS-34978	7/24/2003	18.6	110.6	8.4
FTSS-34983	7/24/2003	18.4	93.7	10.5
FTSS-53763	7/31/2003	18.5	113.7	7.4
FTSS-53780	7/31/2003	17.8	113.5	8.3
FTSS-53766	7/31/2003	18.4	110.9	7.5
FTSS-53885	8/5/2003	25.5	77.7	7.9
FTSS-53886	8/5/2003	26.7	76.4	7.2
FTSS-53887	8/5/2003	28.1	75.3	6.0
FTSS-SAE-1	8/12/2003	19.8	92.0	10.2
FTSS-55241	8/12/2003	22.9	99.7	4.8
FTSS-55243	8/12/2003	22.3	97.5	5.2
FTSS-55244	8/12/2003	22.4	110.6	5.4
FTSS-75060	8/16/2003	22.1	88.7	4.9
FTSS-75064	8/16/2003	23.7	86.4	3.7
FTSS-75032	8/17/2003	21.8	87.7	4.5
FTSS-75039	8/17/2003	23.7	93.7	3.4
VRTC	avg	31.2	103.0	4.7
	std. dev.	1.27	3.95	0.95
	% CV	4.07%	3.83%	20.18%
DATD	avg	28.3	74.2	7.3
	std. dev.	0.85	4.62	1.40
	% CV	3.01%	6.23%	19.16%
FTSS	avg	21.8	95.2	6.7
	std. dev.	3.09	12.96	2.18
	% CV	14.15%	13.61%	32.40%
NHTSA + DATD	avg	29.7	88.6	6.0
	std. dev.	1.82	15.63	1.77
	% CV	6.11%	17.64%	29.49%
NHTSA + DATD +FTSS	avg	25.1	92.5	6.4
	std. dev.	4.7	14.2	2.0
	% CV	18.88%	15.41%	31.38%

[FR Doc. 05–24629 Filed 12–29–05; 8:45 am]
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Proposed Rules

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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. 2001-NE–30-AD]

RIN 2120-AA64

Airworthiness Directives; Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines. That AD currently requires initial and repetitive visual inspections for fretting and fluorescent magnetic particle inspections (FMPI) for cracking in the area of the tierod holes on 8th stage high pressure compressor (HPC) front hubs (from here on, referred to as HPC front hubs) that have operated at any time with PWA 110–21 coating. This proposed AD would require either replacing HPC front hubs and HPC disks that have operated at any time with PWA 110–21 coating and that operated in certain engine models, or, visually inspecting and FMPI for cracking of those parts and replating them if they pass inspection. This proposed AD would also require adding JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, 17A, 17R, and 17AR engines to the applicability. This proposed AD results from an investigation by PW, which concluded that any HPC front hub or HPC disk coated with PWA 110–21 that ever operated on JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, could crack before reaching their published life limit. We are proposing this AD to prevent a rupture of an HPC front hub or an HPC disk that could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by February 28, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001 NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–7700; fax (860) 565–1605 for the service information identified in this proposed AD.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2001–NE–30–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On November 15, 2002, we issued AD 2002–23–14, Amendment 39–12958 (67 FR 70686, November 26, 2002). That AD requires initial and repetitive visual inspections for fretting and FMPI for cracking in the area of the tierod holes on HPC front hubs that have operated at any time with PWA 110–21 coating. That AD resulted from the discovery of cracking in the area of the tierod holes, found during routine engine overhauls. That condition, if not corrected, could result in an uncontained engine failure and damage to the airplane.

Actions After We Issued AD 2002–23–14

After we issued AD 2002–23–14, PW completed their investigation to determine the cause of cracking in the area of the tierod holes on HPC front hubs. As part of that investigation, PW looked at seven HPC front hubs coated with PWA 110–21. They found fretting, cracks, or both, at the rear bolt face of the HPC front hub on six of the seven HPC front hubs. This was similar to the cracks seen in PW's initial investigation into this issue. Most of the seven hubs had low cycle time, with the lowest being 2,800 cycles-since-new. Additional cracks were found on other stages of HPC disks, both with nickel-cadmium, and PWA 110–21 coating. PW determined that all HPC front hubs and HPC disks that have ever been coated with PWA 110–21 and that have ever been operated on JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, have a higher risk of fracturing before reaching their published life limit of 20,000 cycles-in-service, than HPC front hubs and HPC disks plated with nickel-cadmium.

Relevant Service Information

We have reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. JT8D A6430, Revision 2, dated December 23, 2004, applicable to JT8D–209, –217, –217A,

–217C, and –219 turbofan engines, and PW ASB No. JT8D A6468, dated December 23, 2004, applicable to JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines. Those ASBs describe procedures for visual inspections for fretting wear and FMPI for cracking of HPC front hubs that have operated with PWA 110–21 coating in the interface between the HPC front hub and the stage 8–9 spacer. Those ASBs also describe procedures for replating HPC front hubs using nickel-cadmium, and replating stage 8–9 spacers using nickel-cadmium or electroless nickel.

Differences Between the Proposed AD and the Manufacturer's Service Information

Although the ASBs only require inspection of the HPC front hubs and stage 8–9 spacers, we propose to require inspecting all 7th stage HPC disks and 9th stage-through-12th stage HPC disks for fretting wear and FMPI for cracking at the same time the HPC front hub is visually inspected. These other HPC disks, which are coated with PWA 110–21, have increased risk of cracking and failure.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

• Visual inspections for fretting wear and FMPI of HPC front hubs, HPC disks, and stage 8–9 spacers that at any time operated coated with PWA 110–21, replacing them if necessary; replating those HPC front hubs and disks using nickel-cadmium, and replating stage 8–9 spacers using nickel-cadmium or electroless nickel;

OR

• As optional terminating action to the visual inspections in the proposed AD, replacing HPC front hubs, HPC disks, and stage 8–9 spacers that at any time operated coated with PWA 110–21 in JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, or –219 turbofan engines.

• Replacement must be with HPC front hubs and HPC disks plated with nickel-cadmium that have never operated with PWA 110–21 coating, and stage 8–9 spacers plated with nickel-cadmium or electroless nickel.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

About 1,573 JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, and 1,280 JT8D–200 series turbofan engines, installed on airplanes of U.S. registry would be affected by this proposed AD. We estimate it would take about 12 work hours per engine to perform the proposed actions, and the average labor rate is $65 per work hour. We also estimate 175 of those engines would be removed before reaching scheduled maintenance, and would require an additional 60 work hours to disassemble and reassemble each engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,907,840.

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 110–2134, February 26, 1979); and

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2001–NE–30–AD'' in your request.

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 Federal Aviation Administration 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 Amendment 39–12958 (67 FR 70686, November 26, 2002) and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 2001–NE–30–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 28, 2006.

Affected ADs

(b) This AD supersedes AD 2002–23–14, Amendment 39–12958.

Applicability

(c) This AD applies to all Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, with 8th stage high pressure compressor (HPC) front hubs (from here on, referred to as HPC front hubs) as defined in the following Table 1:

TABLE 1.—AD APPLICABILITY

If:	And the HPC front hub:	Then this AD is:
(1) The HPC front hub at any time operated coated with PWA 110–21.	Operated in a JT8D–15, –15A, –17, –17R, –17AR, –209, –217, –217A, –217C, or –219 engine.	Applicable.

TABLE 1.—AD APPLICABILITY—Continued

If:	And the HPC front hub:	Then this AD is:
(2) The HPC front hub at any time had coating in the interface between the HPC front hub and the stage 8–9 spacer (PWA 110–21 coating applied to spacer).	Operated in a JT8D–209, –217, –217A, –217C, or –219 engine.	Applicable.
(3) The HPC front hub and HPC disks have PWA 110–21 coating.	Operated in a JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, or –11 engine, but never operated in a JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, or –219 engine.	Not applicable.
(4) The HPC front hub has never operated with PWA 110–21 coating in the interface with the stage 8–9 spacer, either on the HPC front hub or on the stage 8–9 spacer.	.....	Not applicable.

These engines are installed on, but not limited to, Boeing DC–9, MD–80 series, 727 series, and 737 series airplanes.

Unsafe Condition

(d) This AD results from an investigation by PW, which concluded that any HPC front hub or HPC disk coated with PWA 110–21 that ever operated on JT8D–15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines, could crack before reaching their published life limit. We are issuing this AD to prevent a rupture of an HPC front hub or an HPC disk that could result in an uncontained engine failure and damage to the airplane.

Compliance

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

JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines—Inspect or Replace HPC Front Hubs, HPC Disks, and Stage 8–9 Spacers

(f) For JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, do the following:

(1) Using the inspection schedule in Table 2 of this AD, strip the protective coating, visually inspect for fretting wear, fluorescent magnetic particle inspect (FMPI) for cracks, reidentify, replate HPC front hubs and stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1 through 3.B.(7)(b) under ''For Rear Compressor Front Hubs that Have Operated With PWA 110–21 coating AT ANY TIME During Their Service Life in JT8D–15, –15A, –17, –17A, –17R, –17AR Engine Models.'' of PW Alert Service Bulletin (ASB) JT8D A6468, dated December 23, 2004.

TABLE 2.—HPC DISK INSPECTION SCHEDULE

HPC front hub cycles-since-new (CSN) on the effective date of this AD	Inspect before additional cycles-in-service (CIS) or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (f)(3) of this AD
(ii) 15,500 or more, but fewer than 19,000.	1,000 CIS or 19,500 CSN.	Paragraph (f)(3) of this AD.
(iii) Fewer than 15,500.	5,000 CIS or 16,500 CSN.	Paragraph (f)(3) of this AD.
(iv) Fewer than 5,000 that are accessible.	.....	Paragraph (f)(3) of this AD. If the parts pass inspection, parts may be reinstalled. Inspect again using the criteria listed in (iii) of this Table.

(3) When the HPC front hub is inspected, visually inspect for fretting wear and FMPI for cracks on 7th stage HPC disks and 9th stage-through-12th stage HPC disks. Inspection information can be found in the applicable sections of JT8D Engine Manual Part Number (P/N) 481672, listed in the following Table 3:

TABLE 3.—7TH STAGE HPC DISKS AND 9TH STAGE-THROUGH-12TH STAGE HPC DISKS INSPECTION INFORMATION

Stage	Chapter/ Section	Visual inspection	Fretting inspection	FMPI
7	72–36–41	Inspection–01	Inspection–04	Inspection–03.
9	72–36–43	Inspection–01	Inspection–04	Inspection–03.
10	72–36–44	Inspection–01	Inspection–04	Inspection–03.
11	72–36–45	Inspection–01	Inspection–04	Inspection–03.
12	72–36–46	Inspection–01	Inspection–04	Inspection–03.

JT8D–15, –15A, –17, –17A, –7R, and –17AR Turbofan Engines—Cycle Adjustment for HPC Front Hubs That Entered Service With Nickel-Cadmium Plating and PWA 110–21 Coating

(g) For JT8D–15, –15A, –17, –17A, –17R, and –17AR turbofan engines with front hubs that entered service with nickel-cadmium plating and PWA 110–21 coating, but have also operated during the life of the hub with PWA 110–21 coating:

(1) You are allowed to make a cycle adjustment if the hub was never operated with a PWA 110–21-coated stage 8–9 spacer.

(2) Use the information under ''Compliance'' of PW ASB JT8D A6468, dated December 23, 2004, to determine the adjustment.

JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines—Inspect or Replace HPC Front Hubs and Stage 8–9 Spacers

(h) For JT8D–209, –217, –217A, –217C, and –219 turbofan engines, do the following:

(1) Using the inspection schedule in Table 4 of this AD, strip the protective coating, visually inspect for fretting wear, FMPI for cracking, reidentify, replate HPC front hubs and the stage 8–9 spacers, and replace if necessary.

(2) Use paragraphs 1. through 1.A. and paragraphs 2 through 2.C.(2)(g)2 of Accomplishment Instructions of PW ASB JT8D A6430, Revision 2, dated December 23, 2004.

TABLE 4.—HPC DISK INSPECTION SCHEDULE

HPC front hub CSN on the effective date of this AD	Inspect before additional CIS or CSN, whichever occurs first	Also inspect 7th stage HPC disks and 9th stage-through-12th stage HPC disks using:
(i) 19,000 or more	500 CIS or 20,000 CSN	Paragraph (h)(3) of this AD.
(ii) 15,500 or more, but fewer than 19,000	1,000 CIS or 19,500 CSN	Paragraph (h)(3) of this AD.
(iii) Fewer than 15,500	5,000 CIS or 16,500 CSN	Paragraph (h)(3) of this AD.
(iv) Fewer than 5,000 that are accessible		Paragraph (h)(3) of this AD. If the parts pass inspection, parts may be reinstalled. Inspect again using the criteria listed in (iii) of this Table.

(3) When the HPC front hub is inspected, visually inspect for fretting wear and FMPI for cracks on 7th stage HPC disks and 9th stage through 12th stage HPC disks. Inspection information can be found in the applicable sections of JT8D–200 Engine Manual P/N 773128, listed in Table 3 of this AD.

JT8D–209, –217, –217A, –217C, and –219 Turbofan Engines—Cycle Adjustment for HPC Front Hubs That Entered Service With Nickel-Cadmium Plating and PWA 110–21 Coating

(i) For JT8D–209, –217, –217A, –217C, and –219 turbofan engines with HPC front hubs that entered service with nickel-cadmium plating, but have also operated during the life of the hub with PWA 110–21 coating:

(1) You are allowed to make a cycle adjustment.

(2) Use the information under ''CONDITION A'' of PW ASB JT8D A6430, Revision 2, dated December 23, 2004, to determine the adjustment.

Replacement of HPC Front Hubs and Stage 8–9 Spacers That Have Operated With PWA 110–21 Coating, As Optional Terminating Action—All Engines

(j) For all applicable engines, as optional terminating action for the repetitive visual inspections in this AD, replace HPC front hubs and stage 8–9 spacers that have operated with PWA 110–21 coating in the interface between the hub and the stage 8–9 spacer and HPC disks currently coated with PWA 110–21, as follows:

(1) Install a nickel-cadmium plated HPC front hub that has never operated with PWA 110–21 coating in the interface between the HPC front hub and the stage 8–9 spacer.

(2) Install a nickel-cadmium plated or electroless nickel-plated stage 8–9 spacer.

(3) Install HPC disks that have never operated with PWA 110–21 coating.

Prohibition Against Recoating the HPC Front Hub, Stage 7 HPC Disk, and Stage 8–9 Spacer With PWA 110–21—All Engines

(k) Do not recoat the HPC front hub with PWA 110–21 (Repair-23 of Chapter/Section 72–36–42 of JT8D–200 Engine Manual, P/N 773128, and Repair-27 and Repair-28 of Chapter/Section 72–36–42 of JT8D Engine Manual, P/N 481672).

(l) Do not recoat the 7th stage disk with PWA 110–21 (Repair-15 of Chapter/Section 72–36–41 of JT8D–200 Engine Manual, P/N 773128, and Repair-15 of Chapter/Section 72–36–41 of JT8D Engine Manual, P/N 481672).

(m) Do not recoat the stage 8–9 spacer with PWA 110–21 (Repair-03, Task 72–36–12–30–003–002, of Chapter/Section 72–36–12 of JT8D–200 Engine Manual, P/N 773128, and Repair-01, Task 72–36–12–30–001–002, of Chapter/Section 72–36–12 of JT8D Engine Manual, P/N 481672).

Definitions

(n) For the purposes of this AD, a shop visit is an engine removal, where engine maintenance entails separating pairs of major engine flanges or removing a disk, hub, or spool at a maintenance facility, regardless of other planned maintenance, except as follows:

(1) Removing the engine to perform field maintenance type activities at a maintenance facility in lieu of performing them on-wing is not a ''shop visit.''

(2) Separating flanges of the Combustion Chamber and Turbine Fan Duct Assembly (split flanges) to access non-rotating accessory hardware is not a ''shop visit.''

(3) Separating flanges to ship the engine without subsequent internal maintenance is not a ''shop visit.''

(o) For the purposes of this AD accessibility of the HPC front hub is removing the hub from the engine and deblading that hub.

Alternative Methods of Compliance

(p) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(q) None.

Issued in Burlington, Massachusetts, on December 23, 2005.

Carlos Pestana,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E5–8099 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 285

RIN 1010–AD30

Alternate Energy-Related Uses on the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: The MMS is seeking comments on the development of a regulatory program to implement portions of the Energy Policy Act of 2005, Section 388—Alternate Energy-Related Uses on the Outer Continental Shelf. Specifically, MMS is seeking comments regarding energy development from sources other than oil and gas and alternate uses of existing facilities.

DATES: MMS will consider all comments received by February 28, 2006. MMS will begin reviewing comments then and may not fully consider comments received after February 28, 2006.

ADDRESSES: You may submit comments on the notice by any of the following methods listed below. Please use the Regulation Identifier Number (RIN) ''1010–AD30'' as an identifier in your message. See also Public Comment Policy under Supplementary Information.

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the website for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use the RIN in the subject line.

• Fax: 703–787–1546. Identify with the RIN.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Alternate Energy-Related Uses on the Outer Continental Shelf—1010–AD30'' in your comments.

FOR FURTHER INFORMATION CONTACT: Amy C. White, 703–787–1665.

SUPPLEMENTARY INFORMATION:

Public Comment Policy: All submissions received must include the agency name and RIN, ''1010–AD30'' for this notice. Our practice is to make comments, including names and addresses of respondents, available for public review. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Except for proprietary information, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background: Section 388(a) of the Energy Policy Act of 2005 (the Act) amended section 8 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337) to authorize the Department of the Interior (DOI) to grant leases, easements or rights-of-way on the U.S. Outer Continental Shelf (OCS) for the development and support of energy resources from sources other than oil and gas and to allow for alternate uses of existing facilities on the OCS. This authority will be exercised by the MMS. MMS is the agency within DOI that manages energy and mineral resources on the OCS.

The Act requires MMS to grant leases, easements and rights-of-way on a competitive basis, unless there is no competitive interest. MMS is developing a program and regulations to implement certain portions of section 388(a) of the Act. Under this authority, MMS may issue leases, easements or rights-of-way if those activities:

• Produce or support production, transportation, or transmission of energy from sources other than oil and gas.

• Use, for energy-related purposes or other authorized marine related purposes, facilities currently or previously used for activities authorized under the OCSLA.

The Act does not supersede any existing restrictions on OCS activities, including existing deferrals by Presidential withdrawal or congressional moratoria for oil and gas production-related activities, and does not apply to areas designated as marine sanctuaries, national parks, national wildlife refuges, and national monuments. The Act also authorizes the issuance of leases, easements or rights-of-way for activities that support exploration, development, production, or storage of oil or natural gas and for activities that support transportation of oil or natural gas, excluding shipping activities. These provisions are not addressed in this ANPR and will not be included in this planned rulemaking. MMS will address these activities through additional rulemaking, as needed.

MMS anticipates proposals for various types of energy development projects on the OCS from sources other than oil or natural gas and alternate uses for the OCS, under the Act. MMS anticipates that the majority of the applications received for non-oil and gas development projects will be for the development of renewable energy. Possible sources of renewable energy include, but are not limited to:

• Wind
• Wave
• Current
• Solar

We also would like comments on types of energy that are considered to be alternative energy but not renewable energy.

Alternate uses of existing facilities may include, but are not limited to:

• Offshore aquaculture
• Research
• Education
• Recreation
• Support for offshore operations and facilities
• Telecommunications facilities

Although the Act authorizes MMS to permit alternate uses of existing OCS facilities, MMS is not seeking the authority over activities such as aquaculture, but only the decision to allow platforms to be converted to such uses, if the appropriate agency approves the underlying activity.

Program and Regulation Development

MMS interprets the authority granted in section 388(a) of the Energy Policy Act of 2005 to issue leases, easements or rights-of-way as also providing MMS authority to regulate or permit the activities that occur on those leases, easements or rights-of-way, if those activities are energy related. MMS is developing a comprehensive program and regulations to manage renewable and other alternate energy projects and to permit alternate uses of existing OCS facilities, as authorized in section 388(a) of the Energy Policy Act of 2005. Objectives of the new program are to provide access to the OCS for such projects in a way that balances competing and complementary uses of offshore acreage; takes into account the evolving nature of the energy industry; and provides a fair return to the United States for access to the OCS.

MMS will require that all authorized operations move from proposal to development in a timely manner. MMS regulations will govern projects from proposal through the development process, operations, and end of life. MMS will monitor and enforce compliance. MMS promotes using the best available and safest technology. Contingency planning for technology failure, human factors, or extreme offshore events will be required.

MMS will involve stakeholders throughout the program and regulation development process. We will coordinate with and consult state governors, local government executives, and other Federal agencies concerning activities that may affect them. MMS is interested in developing processes that are clear to all stakeholders.

To assist MMS in developing this new program and implementing regulations, we are requesting public comments. We will consider these comments while developing proposed regulations. To facilitate commenting we have identified five major program areas, listed below, with coordination and consultation an important aspect of all of the program areas. We will discuss each area individually and provide a list of general issues followed by specific questions for each program area. These lists and questions are not all inclusive, but are intended to provide you with ideas and a framework for commenting.

Program Areas

• Access to OCS lands and resources
• Environmental information, management, and compliance
• Operational activities
• Payments and revenues
• Coordination and consultation

Please indicate which program area your comments address. If your comments cover issues outside of the program areas, please identify them as ''other.''

1. Are there regulatory regimes, either in the U.S. or abroad, that address

similar or related issues that should be reviewed or considered as MMS moves forward with the rulemaking process?

Program area: Access to OCS Lands and Resources

Description: There are several methods authorized by the statute for providing access rights to the OCS, including leases, easements and rights-of-way. All of these methods usually require certain pre-qualification measures, such as a showing of financial capability to carry out the proposed project.

The MMS will require a defined schedule for action and terms and conditions to maintain the interest granted. In addition, approval may be contingent on the receipt of certain data and information.

General issues: Please provide information on how MMS can best:

A. Provide access for resource and site assessment.

B. Issue the appropriate instrument (*e.g.*, leases, easements, rights-of-way).

C. Solicit interest for development projects.

D. Identify terms and conditions of use such as:

Issuance.

Duration.

Assignment of rights.

Suspensions and cancellation of rights.

Limitation of rights.

E. Identify geographical areas of interest for:

Resource and site assessment.

Development feasibility.

F. Ensure fair competition.

G. Process permits and applications.

H. Process pre-application resource assessments.

I. Allow concurrent developments.

J. Minimize multi-use conflicts .

Specific questions:

2. Possible development scenarios include phased access rights, which would allow for resource and/or site assessments and research prior to securing additional access rights. Rights could be permitted on a case-by-case basis. Development rights would be secured by a competitive process. An alternative would be to require that interested parties secure the access rights to an area prior to conducting assessments and research. Please comment on these possible options.

3. In cases where applicants or interested parties propose activities that would foreclose competing future uses, how should MMS estimate ''a fair return,'' especially if the competing uses would likely be public uses?

4. What constitutes a geographical area of interest?

5. What assessments should we require prior to competition?

6. How should MMS structure the competitive process and the application process used to issue OCS access rights? Should MMS auction access rights or engage in direct negotiation?

7. Should MMS take a broad approach to developing a program, or should efforts be targeted to specific regions?

8. How should MMS consider other existing uses when identifying areas for access?

9. How should MMS balance existing uses within an area with potential wind and current energy projects?

10. Should MMS require permits for collecting data from vessels? Should we consider this information proprietary? What criteria should we use for holding the information proprietary?

11. What criteria (*e.g.* environmental considerations, energy needs, economics) should MMS consider in deciding whether or not to approve a project? What criteria should MMS consider for different competing projects (*i.e.* wind versus current) for the same site?

Program Area: Environmental Information, Management, and Compliance

Description: Environmental management systems and review will be critical components of any activity in the new program. Environmental management systems must address all phases of planning and development, on-going operations, and removal of facilities associated with the new program. The new program will require identifying mitigation measures, monitoring programs, developing methods of validation and verification; establishing roles and responsibilities; and developing procedures for determining mitigation effectiveness, all of which are components of an environmental management system. The environmental management system will rely on an adaptive management strategy that gathers and uses information, including monitoring and evaluation of activities and their environmental consequences. Based on the results of this analysis and a determination of the effectiveness of the mitigation measures, revised or new mitigation measures could be implemented. The new regulations will require compliance with all pertinent environmental laws and regulations.

General issues: Please provide information regarding:

K. Information requirements needed for environmental management systems for any project.

L. Assessments and studies of risks and impacts (site-specific and cumulative) associated with offshore energy and alternate use projects.

M. Examples of best practices for environmental compliance, monitoring, and effectiveness being used in the U.S. and elsewhere.

N. Balancing environmental considerations with national energy needs.

Specific questions:

12. What types and levels of environmental information should MMS require for a project?

13. What types of site-specific studies should MMS require? When should these studies be conducted? Who should be responsible for conducting these studies?

14. What should be the goals and objectives of monitoring, mitigation, and enforcement?

15. What types of impacts are of concern? What are effective approaches for mitigating impacts? How can mitigation effectiveness and compliance with Federal environmental statutes be assessed?

16. What regulatory program elements lead to effective enforcement of environmental requirements?

17. How should environmental management systems be monitored (by the applicant, the MMS or by an independent third party)? What should be the MMS roles versus the roles of industry for ensuring appropriate oversight and governance?

Program Area: Operational Activities

Description: Operational activities address all aspects of the program from the application through project assessment, development, installation, and production, to end of project life and removal of facilities. Inspections, monitoring, and enforcement are conducted throughout the entire project life. Risk analysis, engineering, studies, and research occur as needed.

General issues: Please provide information on:

O. Permitting pilot projects.

P. Ensuring human health and safety on and adjacent to the project site.

Q. Protecting environmental resources during construction, production, and removal.

R. Identifying design and installation requirements associated with new projects and modification of existing facilities.

S. Identifying production requirements as a component of diligence.

T. Managing end of life and facility removal.

U. Conducting oversight responsibilities (*e.g.*, inspection, monitoring, enforcement).

V. Identifying technology assessment and research needs.

W. Preventing waste.

X. Conserving resources.

Specific questions:

18. What options should MMS consider as alternatives to facility removal? Are there unique issues (such as liability) associated with those options?

19. What engineering challenges should be considered when operating in an OCS environment?

20. What safety issues exist when operating an energy production facility on the OCS?

21. How should operational activities be monitored (*e.g.* annual on-site inspections with verification of operating plans)? Is there an appropriate role for the applicant and independent third party certification agents? Describe existing models that could serve as a prototype inspection and monitoring program.

22. Are there special considerations that MMS should examine in developing an inspection program that covers a diverse set of renewable production facilities? If so, what are they?

Program Area: Payments and Revenues

Description: MMS has the responsibility to ensure a fair return to the United States for the use of any lease, easement, or right-of-way granted. The MMS is required to establish bonus bids, rentals, fees, royalties, or other payments to ensure that return. Additionally, cost recovery fees may be collected to compensate for the administrative costs of providing various services. Developing a payment and revenue structure, as well as appropriately designing fiscal terms applicable to energy and alternate use projects, requires additional information.

General issues: Please provide information on:

Y. Bonus bids.

Z. Rentals.

AA. Royalty terms.

BB. Fees, including cost recovery fees or other payments.

CC. Assessing value/benefits and impacts, Public, Private.

DD. Valuing leases, easements or rights-of-way.

EE. Comparable fiscal systems.

FF. Surety bonds.

Specific questions:

23. What should the payment structure be designed to collect? Should payments be targeted at charging for use of the seabed? Should payments try to capture the opportunity costs of other activities displaced by the activity? Should the payment structure be designed to capture a portion of the revenue stream, and if so, under what circumstances?

24. Offshore renewable energy technologies are in their infancy. Should the payment structure be designed to encourage the development of these activities until the technologies are better established?

25. What methods are used by the renewable energy industry to quantify the risk and uncertainty involved with estimating the size of a renewable energy resource, and evaluating its profitability?

26. What measures of profitability are commonly used as renewable energy investment decision criteria? How do bonus bids, rents, royalties, fees and other payment methods impact the profitability of these projects?

27. Are there economic models available to calculate the profitability of renewable energy proposals?

28. Increased reliance on renewable energy offers both economic and environmental benefits. What are the public benefits to society and do they differ from market driven benefits?

29. In section 8 (p) of the OCSLA as amended by Section 388 of the Energy Policy Act, the Secretary must require the holder of a lease, easement or right of way granted under that subsection to furnish a surety bond or other form of security. What options should MMS consider to comply with this requirement?

Coordination and Consultation

Description: Section 8(p) of the OCSLA, as amended, includes several provisions relating to coordination and consultation with interested and affected parties. Those provisions call for coordinating and consulting with state governors or local government executives concerning activities that may affect them, developing and implementing regulations in consultation with certain Federal agencies and the governors of affected states, and ensuring that activities are carried out in a manner that provides for coordination with relevant Federal agencies. MMS views these requirements as essentially covering all aspects and phases of the non-oil and gas energy and alternate use program established by the Energy Policy Act of 2005.

Questions relating to coordination and consultation:

30. While MMS considers this ANPR an appropriate start at consultation with interested and affected parties, what other efforts could be undertaken at this early stage of program development?

31. Should a broad approach be taken to developing a program or should efforts be targeted to specific regions with commensurate coordination and consultation?

32. Would the establishment of Federal/state cooperatives for targeted areas be useful? Similar to the process for OCS oil and gas program formulation, should we solicit comments on which areas of the OCS should be included or excluded from the program? After establishing where there is consensus in support of program activities, should coordination and consultation efforts be directed to those areas? Conversely, should such efforts be curtailed or abandoned for areas recommended for exclusion?

33. What are the critical stages (*e.g.* site evaluation, application, competitive sale) for consultation with affected parties?

34. Should procedures for consulting with interested and affected parties be codified in the regulations? In general? In detail?

35. What processes can MMS use to provide for balance between consultations and the time and burden to the projects?

36. Are there specific aspects of the new ROW rule issued by the Bureau of Land Management that should be reviewed by MMS for consideration in its rulemaking?

MMS seeks responses to the questions, and comments as to which option(s) may be considered the most effective and efficient. After analyzing the comments received from this notice, MMS will determine how to proceed. MMS encourages all interested parties to respond to these questions and to provide comments on any aspect of this program.

Dated: December 7, 2005.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. E5–8119 Filed 12–29–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[Docket No. OK–030–FOR]

Oklahoma Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of revisions to a previously proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions Oklahoma proposes concern subsidence control; impoundments; and revegetation success standards.

Oklahoma also elected to withdraw its proposed revisions regarding review of decision not to inspect or enforce. Oklahoma intends to revise its program to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Oklahoma program and proposed amendment to that program are available for your inspection and the comment period during which you may submit written comments on the revisions to the amendment.

DATES: We will accept written comments until 4 p.m., c.t., January 17, 2006.

ADDRESSES: You may submit comments, identified by Docket No. OK–030–FOR, by any of the following methods:

- *E-mail: mwolfrom@osmre.gov.* Include ''Docket No. OK–030–FOR'' in the subject line of the message.
- *Mail/Hand Delivery:* Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Oklahoma program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, E-mail: *mwolfrom@osmre.gov.*

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

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 427–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning Oklahoma's program and program amendments at 30 CFR 936.15 and 936.16.

II. Description of the Proposed Amendment

By letters dated October 14, 2005, and November 17, 2005 (Administrative Record Nos. OK–946.05 and OK–946.08, respectively), Oklahoma sent us amendments to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendments in response to our letters dated September 15, 2005, and October 28, 2005 (Administrative Record Nos. OK–946.04 and OK–946.07, respectively) that we sent to Oklahoma under 30 CFR 732.17(c).

We announced receipt of the proposed amendment in the October 18, 2005, **Federal Register** (70 FR 60481) and invited public comment on its adequacy. The public comment period ended November 17, 2005.

During our review of the amendment, we identified concerns relating to subsidence control, impoundments, revegetation success standards, and review of decision not to inspect or enforce. We notified Oklahoma of the concerns by letters dated September 15, 2005, and October 28, 2005 (Administrative Record Nos. OK–946.04 and OK–946.07, respectively). On October 14, 2005, and November 17, 2005 (Administrative Record Nos. OK–946.05 and OK–946.08, respectively), Oklahoma sent us revised amendments (Administrative Record Nos. OK–946.05 and OK–946.08, respectively).

Below is a summary of the revisions proposed by Oklahoma. The full text of the revised amendment is available for you to read at the locations listed above under **ADDRESSES**.

A. Oklahoma Administrative Code (OAC) 460:20–31–13. Subsidence Control Plan

Oklahoma proposes to revise paragraph (a)(3) to require applications to include surveys of non-commercial buildings or occupied residential dwellings and structures related thereto except for areas where there is no planned subsidence. Oklahoma also proposes to require all applications to include surveys of all drinking, domestic, and residential water supplies.

B. OAC 460:20–43–14. Impoundments

Oklahoma proposes to revise paragraph (a)(14) to require embankment slopes of impoundments to be no closer than 100 feet, measured horizontally, to any public road right-of-way unless otherwise approved under procedures established in OAC 460:20–7–4(4), Areas where surface coal mining operations are prohibited or limited, and 460:20–7–5(d), Procedures.

C. OAC 460:20–43–46 and OAC 460:20–45–46. Revegetation: Standards for Success

Oklahoma proposes to add new paragraphs (b)(3)(B) and to redesignate existing paragraphs (b)(3)(B) through (b)(3)(D) as new paragraphs (b)(3)(C) through (b)(3)(E). New paragraphs (b)(3)(B) allow the Oklahoma Department of Mines (Department) to specify minimum stocking and planting

arrangements for areas to be developed for recreation, shelter belts, or forest products on the basis of local and regional conditions after consultation with and approval by the State agencies responsible for administration of forestry and wildlife programs. The consultation and approval will occur on a permit specific basis and the stocking and planting arrangements will be incorporated into an approved reclamation plan.

D. OAC 460:20–45–47. Subsidence Control

Oklahoma proposes to revise paragraph (c)(4) pertaining to repair of damage to surface lands. This new paragraph requires operators to be governed by a rebuttable presumption of causation by subsidence. The information to be considered in determination of causation is whether damage to protected structures was caused by subsidence from underground mining. All relevant and reasonably available information will be considered by the Department when making the determination.

E. OAC 460:20–57–6. Review of Decision Not To Inspect or Enforce

Oklahoma proposes to withdraw its previously proposed amendment pertaining to a review of the Department's decision to not inspect or take enforcement action with respect to any violation alleged by any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation.

III. Public Comment Procedures

We are reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: OK–030–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Oklahoma program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Oklahoma program has no effect on Federally-recognized Indian tribes.

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

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

of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 2005.

Charles E. Sandberg,

Regional Director, Mid-Continent Region.

[FR Doc. E5–8105 Filed 12–29–05; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–OAR–2005–0161; FRL 8016–9]

Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Requirements for 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to interpret and clarify the 2006 default standard applicable under the Renewable Fuel Program set forth in the Energy Policy Act of 2005. The Act requires that 2.78 volume percent of gasoline sold or dispensed to consumers in the U.S. in 2006 be renewable fuel if EPA does not promulgate comprehensive regulations to implement the Renewable Fuel Program by August 8, 2006. Given the short timeframe available and the need to provide certainty to the regulated community, the Agency is proposing a limited set of regulations for the default standard for 2006 that will provide for collective compliance by refiners, blenders, and importers to meet the 2.78 volume percent requirement, with compliance determined by looking at the national pool of gasoline sold in 2006. The Agency will develop and promulgate the comprehensive program subsequent to this action.

DATES: *Comments:* Comments must be received on or before January 30, 2006.

Hearings: If EPA receives a request from a person wishing to speak at a public hearing by January 17, 2006, a public hearing will be held on January 30, 2006. If a public hearing is requested, it will be held at 10 a.m. at the EPA Office Building, 2000 Traverwood, Ann Arbor, MI 48105, or at an alternate site nearby. To request to speak at a public hearing, send a request to the contact in **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2005–0161, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *macallister.julia@epa.gov.*
- Fax: (734) 214–4816.
- Mail: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. OAR–2005–0161. Please include a total of 2 copies.
- Hand Delivery: EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0161. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov your* e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid

the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4131, FAX (734) 214–4816, E-mail *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: We are proposing a limited set of regulations to interpret and clarify the default renewable fuel standard for 2006 that will go into effect pursuant to the Energy Policy Act of 2005. In the ''Rules and Regulations'' section of the **Federal Register**, we are issuing these regulations as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives adverse comment on one or more distinct sections of this proposal we will publish a timely withdrawal in the **Federal Register** indicating which provisions of the direct final rule will become effective and which provisions are being withdrawn due to adverse comment. Any distinct section of this proposal for which we do not receive adverse comment will become effective on the date set out in the direct final rule, notwithstanding any adverse comment on any other distinct section of today's proposal. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this proposed action include those involved with the production, distribution and sale of gasoline motor fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners, Importers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this proposed action. Other types of entities not listed in the table could also be affected. To decide whether your organization might be affected if this proposed action is finalized, you should carefully examine today's notice and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

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

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

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

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Table of Contents

I. Overview
A. What Is Proposed for 2006?
B. Why Is EPA Taking This Action?
C. When Will EPA Take Action for 2007 and Beyond?
II. Statutory Requirements for the Renewable Fuel Standard Program
A. What Is the Renewable Fuels Standard Program?
B. What Is the Default Standard for 2006?
C. What Happens if EPA Does Not Promulgate Default Regulations for 2006?
III. Collective Renewable Fuel Use and the Default Standard
A. Liability Under the Default Standard
1. Who should be liable?
2. What is collective liability?
B. Why We Believe That the Default Standard Will Be Met Collectively
IV. Our Proposed Program for 2006
A. Liable Parties
B. How Would Compliance Be Determined?
1. Activities required of liable parties

2. Renewable fuels accounting for compliance purposes
3. EPA determination of collective compliance with the default standard
C. No Role for Credit Trading
V. Public Participation
VI. Administrative Requirements
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
VII. Legal Authority

I. Overview

Section 1501 of the Energy Policy Act of 2005 (Energy Act or the Act) amended the Clean Air Act by adding a new provision establishing a national renewable fuel program (also commonly known as the Renewable Fuel Standard program, or RFS program). This program is designed to significantly increase the volume of renewable fuels that are blended into gasoline, starting with calendar year 2006. The Act calls on EPA to issue implementing regulations by August 8, 2006, and provides that if EPA has not adopted such regulations by that date then 2.78 percent of the gasoline sold or dispensed to consumers for calendar year 2006 must be renewable fuel.

EPA does not believe that it can meet the August, 2006, statutory deadline. The issues that need to be resolved in adopting regulations to establish the comprehensive compliance and credit trading program are complex, making it important for EPA to receive input from the various stakeholders. This effort will require significant amounts of time and effort. In addition, a comprehensive set of regulations implementing the RFS would constitute a major rulemaking effort, which typically requires a significant amount of analysis of important issues such as emissions inventory impacts, costs, feasibility, and benefits. This work cannot be completed in the context of a final rulemaking by August, 2006, which must be preceded by a notice and comment process. At the same time, it is critical that industry be informed of how to demonstrate compliance prior to August, 2006, since the program defined by the Act begins in January 2006. The default provisions in the Act are not self explanatory, neither identifying the responsible parties nor the method by which they must demonstrate compliance. EPA is therefore proposing a limited set of regulations that would interpret and clarify the statutory default provision for 2006. The rule would provide certainty to the parties involved as to their responsibilities for 2006, and will help to provide a smooth transition to the long-term RFS program. This section summarizes the regulatory approach we propose taking for 2006.

A. What Is Proposed for 2006?

The Energy Policy Act of 2005 anticipated the possibility that a full RFS program might not be promulgated by the start of 2006, and so provided a default standard applicable to 2006 only. The default standard specifies that 2.78 volume percent of gasoline sold or dispensed to consumers in the U.S. in calendar year 2006 must be renewable fuel. The default standard is applicable if the Agency does not promulgate regulations to implement the full RFS program.

The Agency proposes to interpret the default standard for 2006 with regulations identifying the liable parties as refiners, importers, and blenders. Compliance with the default standard, however, would be determined on a collective, rather than an individual, basis. Under this approach, refiners, blenders, and importers would together be responsible for meeting the default 2.78 percent standard, and compliance with this standard would be calculated over the pool of gasoline sold to consumers. An individual refiner, blender, or importer would not be responsible for meeting the 2.78 percent standard for the specific gasoline it produces. The Agency would determine compliance following 2006 using data on gasoline and renewable fuel consumption available from the Energy Information Administration, supplemented by other readily available information. If we determine that the default standard has not been met in 2006 on this collective basis, any deficit would be carried forward and applied as an adjustment to the standard for 2007. The regulations implementing the default standard for 2006 would not include any provisions for credit generation or trading, given the collective nature of the obligation.

B. Why Is EPA Taking This Action?

The rulemaking required to implement the full RFS program, including both program design and the various analyses necessary, will require a substantial effort involving many stakeholders. For instance, it will require the Agency to undertake an analysis of small business impacts under the Small Business Regulatory Enforcement Flexibility Act (SBREFA), provide public notice through a proposed rule and an opportunity for comment including an opportunity for a public hearing, a Regulatory Impact Analysis, and ultimately produce a final rule. This process cannot occur by the time the RFS program begins in January 2006, nor does EPA anticipate that it can be completed by the one year deadline set in the Act. Therefore, we believe the default standard of 2.78 percent will apply to calendar year 2006.

However, the default standard provided in the Act will be difficult for the regulated community to interpret and implement without additional guidance from the Agency. Although the Act provided that the default standard of 2.78 percent would apply in 2006 in the event that the Agency did not promulgate regulations implementing the full renewable fuels program, the default standard provision does not specify the liable parties and the specific nature of their obligation. It also does not discuss compliance mechanisms, reporting requirements, or credit trading. The resulting uncertainty associated with the default standard will create confusion and risks a problematic initial implementation of the RFS program. In the extreme, allowing the default standard to go into effect without EPA guidance could result in significant disruptions in the gasoline and renewable fuel production, blending, and distribution systems.

The goal of today's action is to provide certainty to parties involved in the production and distribution of gasoline and renewable fuels regarding the Agency's approach to determining compliance with the default standard for 2006. Today's action proposes a compliance mechanism that is simple and straightforward to implement, explains that the default standard would be applied on a collective basis, and can be finalized expeditiously.

In addition to meeting the need for clarity in the limited timeframe available, we believe that the collective approach to compliance for 2006 is reasonable given our expectation that the default standard would be met on a collective basis in 2006 even without imposition of any RFS obligations. Not only has the U.S. Department of Agriculture projected total ethanol production for 2006 to be above 4.0 billion gallons, but the Renewable Fuel

Association has indicated that total ethanol production capacity already exceeds 4.1 billion gallons and that additional production capacity currently under construction exceeds 1.2 billion gallons. Production of biodiesel and cellulosic ethanol, as well as imports of ethanol, increase these estimates even further. It's clear that capacity in 2006 will be adequate to produce the renewable fuel needed to meet the 2.78 percent default standard. In addition, sustained high gasoline prices, state bans on MTBE, and continued gasoline demand growth in the face of limited refining capacity all support our conclusion that the default standard for 2006 will be met on a collective basis based on market forces alone. Section III.B provides more details regarding these projections. In the unlikely event that the default standard is not met on a collective basis for 2006, a proposed deficit carryover provision would allow us to make up for any shortfall by adjusting the applicable standard in 2007 commensurately.

C. When Will EPA Take Action for 2007 and Beyond?

The default standard of 2.78 percent provided in the Act applies exclusively to calendar year 2006, and the collective compliance approach we are proposing in today's action would likewise apply only to 2006. For 2007 and beyond, the Agency will not only need to determine and publish the applicable renewable fuel standard for each year, but will also need to specifically identify liable parties, lay out the compliance program including recordkeeping and reporting requirements, and delineate all elements of the credit trading program including how credits are generated, how they can be transferred, and how they can be used for compliance purposes. All these and many other issues impacting the full RFS program will be addressed in a subsequent Agency action and are not discussed in today's notice of proposed rulemaking (NPRM).

II. Statutory Requirements for the Renewable Fuel Standard Program

This section describes the Act's provision regarding the long-term RFS program, and the default standard that goes into effect automatically in the event that the Agency does not promulgate regulations before August 8, 2006 implementing the long-term program. It also describes the problems that may occur if the Agency does not clarify such things as liable parties, compliance mechanisms, and the role of credit trading under the default standard.

A. What Is the Renewable Fuels Standard Program?

Section 1501 of the Energy Policy Act of 2005 (the Act) describes the renewable fuel program, also known as the Renewable Fuel Standard (RFS) program. This provision was added to the Clean Air Act as Section 211(o), and requires EPA to establish a program to ensure that U.S. gasoline contains specific volumes of renewable fuel for each calendar year 2006 through 2012, as shown in Table II.A–1 below.

TABLE II.A–1.—APPLICABLE VOLUMES OF RENEWABLE FUEL UNDER THE RFS

Calendar year	Billion gallons
2006	4.0
2007	4.7
2008	5.4
2009	6.1
2010	6.8
2011	7.4
2012	7.5

Starting with 2013, EPA is required to establish the applicable national volume which must require at least the same overall volume percentage of renewable fuel as was required in 2012.

In order to ensure the use of the renewable fuel volume specified for each year, the Agency must set a percentage standard for each year representing the percentage of gasoline sold or introduced into commerce which must be renewable fuel. The standard is to be set based on the renewable fuel volumes shown in Table II.A–1 and gasoline volume projections provided by the Energy Information Administration (EIA). The standard for each year must be published in the **Federal Register** by November 30 of the previous year.

Renewable fuels are defined in the Act primarily on the basis of the feedstock. In general, renewable fuels must be produced from plant or animal products or wastes, as opposed to fossil fuel sources. The Act specifically identifies several types of motor vehicle fuels as being encompassed by the definition, including cellulosic biomass ethanol, waste-derived ethanol, biogas, and biodiesel.

The percentage standard is applicable to refineries, blenders, and/or importers, as appropriate. The percentage standard must be adjusted such that redundant obligations are avoided, and must take into account the fact that small refineries are exempted from the program through 2011[1]. For liable parties, the RFS standard must be met on an annual averaging basis and does not apply on a per-gallon basis.

The Act requires the Agency to promulgate a credit trading program for the RFS program. The credit trading program will serve two purposes. First, it will allow parties who are liable for the standard to comply through the purchase of credits if they cannot or do not wish to blend renewable fuels into gasoline themselves. Second, it will permit renewable fuels that are not blended into gasoline, such as biodiesel and biogas, to participate in the RFS program. The Agency must also determine who can generate credits and under what conditions, how credits may be transferred from one party to another, and in certain cases the appropriate value of credits from different types of renewable fuel.

The Agency envisions promulgation of facility registration, recordkeeping and reporting requirements, enforcement provisions, and various fuel tracking mechanisms to implement the program. These provisions will enable the credit trading program to function properly and will ensure adequate bases for Agency enforcement efforts.

The Act also contains several other provisions that could affect the comprehensive RFS program. For instance, the Energy Information Administration (EIA) is required to determine whether there is a continuing pattern of less than 25 percent of the renewable fuel pool being used in either summer or winter periods. If so, then EPA is required to promulgate regulations establishing a requirement for such minimum seasonal use of renewable fuel. The Act also provides for several kinds of waivers, including one for the initial year of the program in which the Department of Energy (DOE) may recommend that EPA waive the RFS program in whole or in part. Another general waiver provision authorizes EPA to waive the program in whole or in part in response to a petition by a state or states.

Thus, the long-term RFS program envisioned in the Act presents many complex and varied implementation issues. There are a large number of parties that could potentially be affected by the program, including the parties in the gasoline and renewable fuels production and distribution systems. Credit generation, trading and use will be an integral aspect of the program, and this credit program presents many unique issues to address, as most of the

[1] Regulatory provisions promulgated by the Agency must also contain provisions allowing exempted small refineries to opt into the RFS program.

blending and use of renewable fuels occurs by parties separate and distinct from the gasoline producers. Limited discussions with stakeholders have served to highlight the complexity. Because of the many disparate interests involved and the large potential impacts of the program, EPA wants to make sure that development of the long-term RFS program is done thoughtfully and with broad stakeholder involvement. In addition, significant actions such as this require us to perform analyses of cost, feasibility, emission inventory impacts, air quality, and impacts on small businesses. Consequently, EPA does not believe that it can meet the August 8, 2006 statutory deadline to issue final comprehensive regulations implementing the full program.

B. What Is the Default Standard for 2006?

If EPA fails to publish final regulations establishing the full RFS program by August 8, 2006, Section 211(o)(2)(a)(iv) of the amended Clean Air Act provides that ''* * * the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 2.78 percent for calendar year 2006.'' However, the provision provides no details on how this requirement is to be implemented.

For instance, the default standard provision does not identify what parties are subject to this statutory requirement. There is a large network of refiners, importers, blenders, distributors, and retailers who arguably could be held responsible to meet this requirement. The statutory language also does not indicate whether the default standard is to be applied to each gallon of gasoline sold or dispensed in 2006, if it is to represent the annual average renewable fuel content for the gasoline sold or dispensed by each responsible party, or if instead it is to be an annual average for all parties acting collectively in the fuel production and distribution system.

Another aspect of the statutory language regarding the default standard that makes its implementation problematic is the absence of any explicit discussion of credit trading. Since producers of gasoline are generally not directly involved in the blending of renewable fuels, credit trading will be a critical component of the comprehensive RFS program. Without credit trading, if each party was individually liable to meet the default standard for their own gasoline, then a liable party would need to ensure that the gasoline it produces actually contains a minimum of 2.78 percent renewable fuel. This would be inconsistent with the direction provided in the Act for the long-term RFS program.

Finally, both the default standard and the annual standard to be met under the long-term program are expressed in the statute in terms of percent renewable fuel in gasoline. Although the definition of renewable fuel includes biodiesel, this particular renewable fuel is not blended into gasoline. While the long-term program will allow for biodiesel integration in the program through credit trading, the default standard provision does not specify the manner in which use of biodiesel is to be counted towards compliance. However, for the purposes of this rule we believe it is appropriate to include biodiesel in the pool of renewable fuel used to determine compliance with the default standard.

C. What Happens if EPA Does Not Promulgate Default Regulations for 2006?

The statutory language regarding the default standard for 2006 is ambiguous and problematic in several respects. As a result, starting in January 2006 there could be a great deal of uncertainty among parties whose business involves gasoline or renewable fuels if the Agency does not provide clarity. These parties will not know whether they are liable for the default standard, and if they are liable how to comply with it. The concern over potential individual liability and the lack of a credit trading program could lead some parties to attempt to procure and blend renewable fuels themselves, when under normal circumstances the logistics and economics of doing so would make such activities prohibitive. Others might attempt to ensure that every gallon of gasoline contains at least 2.78 percent renewable fuel. Still others could ignore the requirement entirely in the absence of explicit descriptions of how the Agency would enforce it. All of these activities could significantly disrupt the supply and distribution system, potentially resulting in local supply shortages and/or price spikes, and yet provide no assurance that the desired amount of renewable fuel will be blended into gasoline.

Due to these concerns, the Agency has determined that it would be in the public interest, and would further the goals of the Act, to issue regulations interpreting and clarifying liability, the mechanism of compliance, and the role of credit trading under the 2006 default standard.

III. Collective Renewable Fuel Use and the Default Standard

This section describes our reasons for believing that a collective compliance approach is a reasonable interpretation of the default standard for the RFS program. We also describe our reasons for believing that the default standard of 2.78 percent will be met in 2006 despite the absence of an RFS standard applicable to individual parties in the fuel production and distribution system.

A. Liability Under the Default Standard

1. Who should be liable?

EPA proposes to identify parties who produce or import gasoline as the parties responsible for implementing the renewable fuel standard for 2006, including refiners, blenders, and importers, with an exemption for refiners that own only small refineries. The default provision itself is ambiguous with respect to liable parties, and could be interpreted as placing ultimate responsibility on a variety of parties in the gasoline production and distribution system, including the retailers who dispense gasoline to consumers. With respect to the long-term renewable fuel program, Congress directed EPA to establish regulations that make the renewable fuel obligation applicable to ''refineries, blenders and importers, as appropriate,'' [see Clean Air Act Section 211(o)(2)(A)(iii)(I)], with an exemption until 2011 for ''small refineries'' [see Clean Air Act Section 211(o)(9)(A)(i)]. Our proposed interpretation of the default standard for 2006 is consistent with these statutory provisions for the long-term renewable fuel program.

EPA believes that refiners, blenders and importers are best positioned to ensure that an appropriate amount of renewable fuel is added to gasoline. Our proposed regulation identifies blenders as a subset of refiners, consistent with our regulatory definition of ''refiner'' at 40 CFR 80.2(i).[2] In addition, EPA believes that retailers are not in the best position to guarantee the renewable fuel content of the gasoline they sell, and placing this responsibility on the many thousands of retailers, many of whom are small businesses, would likely be very burdensome for them and economically disruptive.

2. What is collective liability?

EPA also proposes that the default provision for 2006 be interpreted as imposing a collective obligation on the

[2] Parties whose only activity involves adding oxygenates to gasoline would not be considered refiners under this definition.

regulated parties. This means that if the average volume percent of renewable fuel used in 2006 meets or exceeds 2.78 percent, then the standard is satisfied for all responsible parties, regardless of their individual efforts towards that goal. In light of the fact that industry on average will very likely use more than 2.78 percent renewable fuel in 2006 based solely on market forces (see further discussion below), EPA does not believe that it is necessary or appropriate to interpret the default standard for 2006 as imposing any greater degree of individual responsibility for liable parties. Such a system would require complex credit trading, recordkeeping, and reporting provisions that are not consistent with a default standard that Congress envisioned going into effect without a detailed regulatory program.

EPA is confident that its proposed approach will achieve the statutory objective of ensuring that 2.78 percent of gasoline sold in the United States in 2006 will be renewable fuel, and it will do so in an efficient manner that minimizes costs to industry and consumers. In the unlikely event that EPA's projections of renewable fuel use in 2006 prove inaccurate and the default standard is not met, EPA proposes that the volume obligation for industry in 2007 be adjusted to reflect any volume deficit represented by the difference between the actual renewable fuel volume percentage in 2006 and 2.78 percent. This effectively means that if there is a deficit in renewable fuel use in 2006, the applicable percent standard for 2007 could be higher than it would otherwise be. This deficit carryover provision is similar in concept to the provision required for the long-term renewable-fuel program, to allow individuals that cannot satisfy their renewable fuel obligation in a given year to fulfill any deficit in a subsequent year. See Clean Air Act (CAA) Section 211(o)(5)(D).

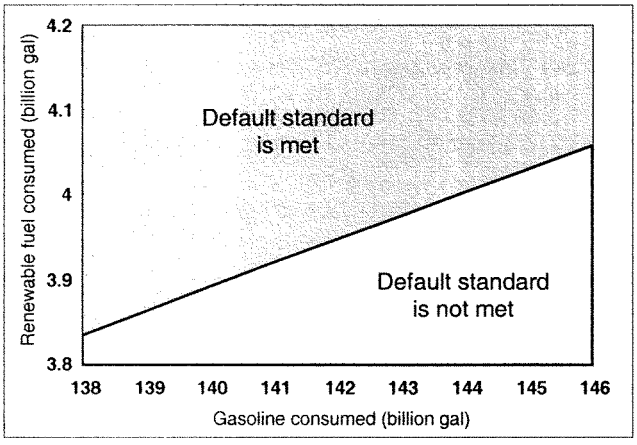
Thus under today's proposed approach to compliance with the default standard, individual parties would still be considered to be in compliance even if they themselves blended little or no renewables, so long as the 2.78 percent requirement is met collectively nationwide in 2006. The carryover of any volume deficit will ensure that compliance with the default standard is ultimately achieved.

B. Why We Believe That the Default Standard Will Be Met Collectively

In proposing a collective compliance approach to meeting the default standard in 2006, we are doing so with the expectation that normal business practices will actually result in the default standard being met. While we are also proposing a deficit carryover provision to address the possibility of a failure to meet the default standard in 2006, we have high confidence that such a provision would not have to be used. This section provides our reasons for believing that the default standard of 2.78 percent will be met in 2006 through existing market forces.

Although the full RFS program specifies that EPA should set a percentage standard designed to ensure use of a renewable volume of at least 4.0 billion gallons, the provision describing the default standard directly sets the percentage as 2.78 percent and makes no reference to this volume. As a result, the actual volume of renewable fuel used in gasoline in 2006 could be greater than or less than 4.0 billion gallons when the default standard of 2.78 percent is met. This potential result is illustrated in Figure III.B–1, where the shaded region represents cases in which the default standard of 2.78 percent has been met.

Figure III.B-1: Impacts of gasoline consumption volumes on renewable fuel volumes under the default standard



A recent projection of the total gasoline consumption volume for 2006 is 141.6 billion gallons.[3] With this gasoline volume, 3.94 billion gallons of renewable fuel would need to be consumed in order for the default standard of 2.78 percent to be met. For simplicity we have focused in this section on our reasons for believing that a least 4.0 billion gallons of renewable fuel will be sold in 2006.

Of all the renewable fuels that may play a role in meeting the default standard in 2006, ethanol is by far expected to represent the largest fraction. Therefore, our reasons for believing that at least 4.0 billion gallons of renewable fuel will be blended into gasoline in 2006 are based primarily on expectations regarding the production and sale of ethanol. Biodiesel volumes are also quickly rising and serve to provide added assurance that the default standard will be met in 2006. The recent excise tax credit for biodiesel

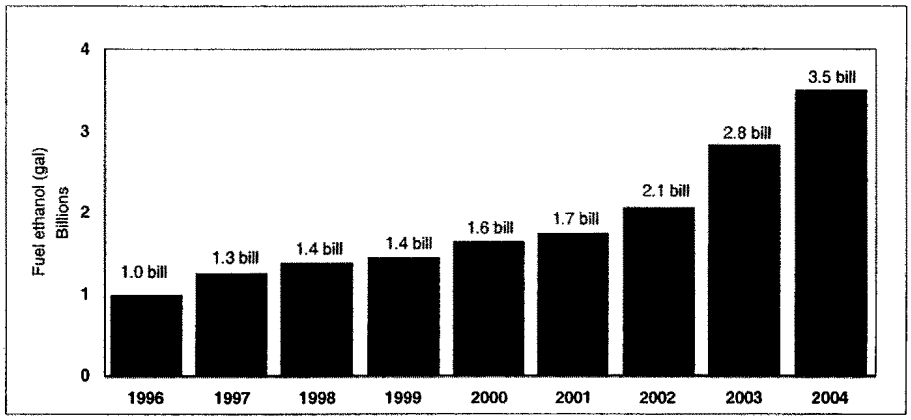
[3] EIA Short-Term Energy Outlook, October 2005.

and its value as a lubricity agent in ultra-low sulfur diesel also add to the attractiveness of biodiesel.

There are a variety of sources of information strongly suggesting that ethanol volumes will exceed 4.0 billion gallons in 2006. These include recent production trends, evaluations of expanding ethanol production capacity, and analyses of future demand. Each of these information sources is discussed in this section.

For instance, recent trends indicate that fuel-grade ethanol consumption has steadily increased since it was first introduced into the gasoline market in the early 1980s. The most recent consumption levels are shown in Figure III.B–2.

FIGURE III.B–2: RECENT ETHANOL CONSUMPTION VOLUMES



Source: EIA Monthly Energy Review, Table 10.1

Some of the recent growth in ethanol consumption appears to have resulted from state bans on the use of the gasoline additive methyl tertiary butyl ether (MTBE). For areas required to use reformulated gasoline (RFG), ethanol often represents the most cost-efficient alternative to MTBE to meet the current RFG oxygen mandate.[4] State bans on MTBE went into effect in 2004 for California, New York, and Connecticut, where approximately one-third of all RFG is sold. The amount of ethanol sold in these three states increased by approximately 1 billion gallons between 2002 and 2004. But ethanol use has increased steadily over the last five years in other RFG areas and in conventional gasoline as well for reasons not associated with MTBE bans. We believe that these increases in ethanol use are due primarily to the beneficial economics of blending ethanol into gasoline as gasoline prices have risen. If the market forces that led to the rising demand for ethanol over the last several years continue into the future, ethanol consumption could easily reach 4.0 billion gallons in 2006.[5]

In addition to ethanol consumption trends, import trends also suggest that the supply of ethanol will increase into 2006. According to EIA, imports of ethanol increased significantly in 2004, totaling nearly 150 million gallons.[6] This volume represents a more than ten-fold increase from each of the previous two years.

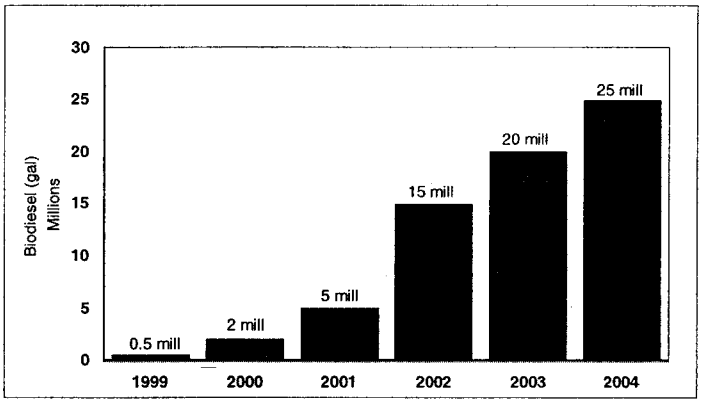
Biodiesel production has also risen significantly in the last several years, and further supports our belief that total renewable fuel volumes in 2006 will exceed 4.0 billion gallons. Figure III.B–3 shows the volumes of biodiesel production in the U.S. in recent years.

[4] The Energy Act contains a provision requiring the Agency to promulgate regulations eliminating the oxygen mandate for RFG by May 5, 2006.

[5] Data from EIA's Monthly Energy Review indicates that ethanol production in the first half of 2005 was 6.8% higher than the same period in 2004. Extrapolated through 2006, this trend would result in just over 4.0 billion gallons produced in 2006.

[6] Petroleum Supply Annual 2004, vol. 2. Table 20.

Figure III.B-3: Recent biodiesel production volumes



Source: National Biodiesel Board

If the trends shown in Figure III.B–3 continue into 2006, there could be as much as 35 million gallons of biodiesel produced. If the ethanol import volumes of 150 million gallons per year continue into 2006, then an additional total of nearly 0.2 billion gallons of renewable fuel may be consumed in the U.S. in 2006 in addition to the ethanol production estimates. Thus the total projected volume of renewable fuel consumed in 2006 would be about 4.2 billion gallons instead of the 4.0 billion gallons we estimated above.

An evaluation of expanding ethanol production capacity also points towards 2006 ethanol volumes easily exceeding 4 billion gallons. For instance, Table III.B–1 shows data from the Renewable Fuels Association for existing and underway ethanol production capacity in the U.S. for the past several years.[7]

TABLE III.B.—U.S. ETHANOL PRODUCTION CAPACITY

	Number of production plants		Production capacity (million gal per year)	
	Existing	Underway	Existing	Underway
2003 (December)	72	15	3,101	598
2004 (December)	81	16	3,644	754
2005 (October)	89	21	4,159	1,249

The average new ethanol plant or plant expansion takes about 14 months to complete, though the time required can range from a few months to over two years.[8] Based on target construction completion dates in Ethanol Producer Magazine, we estimate that, of the 1,249 mgpy of production capacity underway as of October of 2005, 232 mgpy will be online by the end of 2005. At least another 895 mgpy will be online sometime in 2006. However, accounting for the fact that different facilities will come online at different points throughout 2006, the total annual increase in capacity will be roughly 352 mgpy. The total amount of ethanol production capacity for 2006 is thus expected to be 4,743 mgpy. Actual ethanol production has historically been a very large fraction of production capacity as demand increased, generally exceeding ninety percent. As a result these figures strongly suggest that production in 2006 is very likely to be greater than 4 billion gallons.

Two other analyses support our expectation that 2006 ethanol production volumes will exceed 4 billion gallons. The EIA made its own projections of ethanol production in 2006 using its National Energy Modeling System, an annual forecasting tool.[9] In addition to evaluating various versions of the RFS program prior to enactment of the Energy Policy Act of 2005, the EIA also modeled a case in which no RFS program existed. In that event, EIA projected that total annual ethanol consumption in 2006 would be 4.6 billion gallons.

The U.S. Department of Agriculture has also made projections of ethanol production under a scenario in which no RFS program is assumed. Their most recent ''Baseline Projections'' apply to all years between 2006 and 2014, and are based on an analysis of the major forces and uncertainties affecting future agricultural markets.[10] This analysis included such factors as trade, farm income, food prices, weather, international developments, and other macroeconomic conditions affecting the production of corn and other crops used for the production of ethanol. In association with this analysis, total ethanol production in 2006 was projected to be 4.18 billion gallons. Again, considering ethanol imports and biodiesel production, actual renewable

[7] 2003 source: Ethanol Industry Outlook 2004, RFA, February 2004. 2004 source: Ethanol Industry Outlook 2005, RFA, February 2005. 2005 source: ''U.S. Fuel Ethanol Production Capacity'', Renewable Fuels Association. Update September 2005. *http://www.ethanolrfa/eth_prod_fnc.html.*

[8] ''Ethanol Plant Construction'', Ethanol Producer Magazine, October 2005. Page 30.

[9] ''Renewable Fuels Legislation Impact Analysis'', Energy Information Administration, July 2005. *http://www.eia.doe.gov/oiaf/servicerpt/jeffords/.*

[10] ''USDA Agricultural Baseline Projections to 2014,'' February 2005 (OCE–2005–1).

fuel consumption could be as high as 4.4 billion gallons in this scenario.

There are other important, though less quantitative, indicators of growth in the ethanol industry. For instance, in response to increasing trading volume, the Chicago Board of Trade recently announced that it is expanding the number of ethanol futures contracts available.[11] Also, the New York Mercantile Exchange will now offer a New York Harbor ethanol blendstock (RBOB) gasoline futures contract that will replace the MTBE-blended gasoline based contract.

In addition to simple volume projections from past years, we also believe that ethanol production will exceed 4 billion gallons in 2006 due to the favorable economics currently associated with it. Historically the 51¢/gal federal excise tax credit and various state and local credits have provided sufficient economic incentive to overcome the higher production costs of ethanol compared to the production costs of the gasoline it displaces. As a result, demand for ethanol has steadily increased over the years, aided by the RFG oxy mandate and state MTBE bans. However, the increase in crude oil prices in recent years has dramatically increased the production cost of gasoline. Although the price of natural gas used in ethanol production has also risen in recent years, ethanol production costs have remained relatively stable in comparison to gasoline and thus the economic incentive to blend ethanol into gasoline has risen significantly. A similar incentive also now exists for biodiesel in the wake of its recently enacted excise tax subsidy. As long as crude prices remain high, this incentive to blend ethanol and biodiesel into conventional fuels is anticipated to continue. Other factors that have historically been important such as octane, and even the RFG oxygen mandate, are expected to be much less important in 2006. Ethanol's value simply as a extender for gasoline volume is sufficient to keep demand high. Also, with refineries operating at or near capacity and the demand for gasoline increasing in the U.S., the phaseout of MTBE could result in a potential reduction of gasoline volume. We expect that many refiners will use ethanol to replace the lost octane and volume associated with the phaseout of MTBE.

As a result of these favorable economics, despite the removal of the oxy mandate for RFG as required by the Act, we do not anticipate any overall reduction in demand for ethanol next year. The Act provides for immediate elimination in California of the statutory requirement for oxygen in RFG, and 270 days after enactment for the rest of the country.[12] Although the elimination of the oxygen requirement has the potential to reduce ethanol use in some RFG areas, given the strong economic incentive to blend ethanol, its use is expected to rise in others, offsetting any impact. State-mandated ethanol requirements will only solidify this conclusion. Currently, three states mandate the use of ethanol in all gasoline through a state renewable fuels standard: Minnesota, Hawaii, and Montana. Other states may follow in the future—currently state legislators in Illinois, Missouri and Michigan have been discussing introducing similar legislation in those states.

IV. Our Proposed Program for 2006

For calendar year 2006, we are proposing a collective approach to compliance that implements the default 2.78 percent standard. This section describes our proposed 2006 program in detail, including our proposed definition of liable parties under the standard and our proposed mechanism for addressing any potential failure to meet the 2.78 percent collectively.

A. Liable Parties

For calendar year 2006, the Act states that if EPA fails to issue comprehensive regulations establishing the renewable fuel program then ''the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States on a volume basis, shall be 2.78 percent for calendar year 2006.'' The default standard goes into effect independently; that is, no regulations are required to implement the default standard. EPA believes, however, that regulations are nevertheless necessary to clarify how the standard is to be interpreted and implemented.

While the Act provides that the renewable fuel obligation determined pursuant to the long-term RFS program shall ''be applicable to refineries, blenders, and importers, as appropriate,'' the Act does not provide this level of specificity for the default RFS standard for 2006. We are proposing that compliance with the default standard be determined based on the efforts of the collective refining, importing and blending industries. Small refineries would be excluded from liability in the 2006 collective compliance determination. However, since the statutory language regarding the default standard indicates that compliance should be based on gasoline sold or dispensed to consumers in the United States, the gasoline produced by small refiners as well as the ethanol used in gasoline produced by small refineries would be counted in performing the compliance calculations.

The regulations would provide that refiners, blenders and importers have collectively met the standard if the volume of renewable fuels used in gasoline sold in the U.S. in calendar year 2006 is equal to or greater than 2.78 percent. Thus if the standard is achieved collectively, then every individual refiner, blender or importer will be in compliance with the standard. This means that an individual refiner may use less than 2.78 percent in the gasoline it refines, imports or blends, but would not be in violation of the standard as long as the 2.78 percent is met or exceeded in the aggregate by all parties in these industries. If the 2.78 percent default standard is not met collectively, then our proposed regulations would provide for a deficit carryover to 2007 that would apply collectively to all liable parties in 2007. There would be no other consequence for collective failure to meet the 2.78 percent standard in 2006.

B. How Would Compliance Be Determined?

This section describes the activities that would be required of liable parties under the default standard, the types of renewable fuels that would be counted, and the mechanism through which the Agency will determine compliance with the default standard for 2006.

1. Activities Required of Liable Parties

For the collective compliance determination, EPA will calculate the actual volume percent of renewable fuel for 2006 using gasoline and ethanol consumption volumes reported by EIA for 2006, supplemented by readily available information on consumption volumes for other renewable fuels. Thus, individual refiners, importers and blenders will not be required to demonstrate compliance with the default standard. EPA will evaluate whether the default standard has been met collectively by use of readily available information. Individual companies will not be required to keep records of volumes of ethanol purchased

[11] Renewable Fuel News, Hart Energy Publishing. Sept. 26, 2005. Page 4.

[12] Although the Act provides for the elimination of oxygen from RFG, EPA is still required to revise the appropriate sections of the CFR to allow RFG without oxygen to be sold. For purposes of this analysis, we are assuming that such regulatory revision would occur no later than March, 2006 for California, and by May, 2006 (*i.e.*, by 270 days from enactment) for the rest of the U.S. We expect to put out a rule in early 2006 adressing this issue.

for purposes of compliance with this rule.

2. Renewable Fuels Accounting for Compliance Purposes

Under our proposed regulations, EPA would calculate the total volume of renewable fuel to account for all ethanol and non-ethanol renewable fuels used in motor fuel in 2006, including ethanol made from cellulosic or waste feedstocks and biodiesel. We would use information on the volumes of these renewable fuels that can be obtained from available sources. We propose that one gallon of cellulosic biomass or waste-derived ethanol count as 2.5 gallons of renewable fuel, following the prescription in Section 211(o)(4) of the Clean Air Act as amended by the Energy Policy Act of 2005.

Although the statutory language regarding the default standard indicates that compliance should be based on renewable fuel in gasoline, we believe that biodiesel should also be included even though it is not blended into gasoline. Not only is biodiesel included within the definition of renewable fuel, but in the context of the long-term RFS program biodiesel can be counted as a component of the renewable fuel pool for use in compliance calculations even though the RFS standard is also based on the percentage use of renewable fuel in gasoline. We further propose that one gallon of biodiesel be counted as one gallon of renewable fuel in the context of 2006 compliance with the default standard. We will revisit the credit value of biodiesel and other renewable fuels in the context of the comprehensive rulemaking implementing the full RFS program, and our approach in this rulemaking is not intended to establish a precedent for our decision there.

3. EPA Determination of Collective Compliance With the Default Standard

We are proposing that the default standard has been met if the volume percent of renewable fuel used in gasoline sold in the U.S. in 2006 is collectively greater than or equal to 2.78 percent. While small refineries are not considered liable parties under the collective compliance approach, we would include the volume of gasoline produced by small refineries as well as the amount of ethanol used in such gasoline in determining whether the 2.78 percent default standard has been met. We believe that including volumes of gasoline and ethanol from small refiners is consistent with the plain language of the default standard, which calls for 2.78 percent renewable fuel in ''gasoline sold or dispensed to consumers.''

We propose to primarily use data published by EIA in determining compliance with the default standard. We have identified the Monthly Energy Review as the most appropriate source.[13] Ethanol is available in Table 10.1,[14] while gasoline volumes are available under ''Product Supplied'' in Table 3.4. Volumes of other renewable fuels that may not be available through EIA publications will be estimated based on information from other readily available and reliable sources.

If the default standard has been met on a collective basis, all refiners, importers and blenders would be deemed to be in compliance whether or not they individually used 2.78 percent ethanol in gasoline. If the default standard has not been met on a collective basis, we propose that an appropriate volume of renewable fuel be carried forward to the 2007 volume obligation which would then be implemented and enforced under the full RFS rule. The additional renewable fuel that is carried forward is termed the ''deficit carryover''. In such an instance, no individual refiner, blender or importer is held liable for the default 2006 standard not being met. Rather, the RFS standard for 2007 would be adjusted to account for any deficit carryover.

Today's rule would provide that a deficit carryover will be required if the 2.78 percent standard is not met. The size of the deficit would be determined with respect to the 2.78 percent default standard. As a result, the minimum necessary volume of renewable fuel consumed in 2006 and the size of any deficit carryover volume will be dependent upon the volume of gasoline consumed. The following examples illustrate how the standard would work, and how the deficit carryover would be calculated.

(A) RENEWABLE VOLUME PERCENT IS GREATER THAN 2.78%:

Actual 2006 gasoline volume:	136.8 bill gal
Actual 2006 renewable volume:	3.90 bill gal
Calculated percent:	Actual renewable volume/actual gasoline volume = 3.9/136.8 = 2.85%
Result:	Standard has been met; no deficit carryover to 2007

(B) RENEWABLE VOLUME PERCENT IS LESS THAN 2.78%:

Actual 2006 gasoline volume:	139.8 bill gal
Actual 2006 renewable volume:	3.8 bill gal
Calculated percent:	Actual renewable volume/actual gasoline volume = 3.8/139.8 = 2.72%
Result:	Standard has not been met. Amount of renewable fuel needed to achieve 2.78%: (2.78%–2.72%) × (actual gasoline used) = 0.06% × 139.8 bill gallon = 0.08 billion gallons. The 0.08 billion gallons is added to the RFS goal for 2007, resulting in a modified goal of 4.78 billion gal/yr of renewable fuel.

Although the Act requires EPA to publish the standard applicable to 2007 by November 30, 2006, the data on actual gasoline and renewable fuel volumes consumed in all of 2006 will not be available at that time. As a result, the addition of any deficit carryover to 2007, if one is necessary, could occur no sooner than early 2007. Under these circumstances, we expect that we would adjust the 2007 standard to account for a carryover from 2006, if necessary, at such time as the data for 2006 are available and in a manner consistent with the regulations that will apply to 2007.

C. No Role for Credit Trading

The Act provides for the regulations implementing the long term RFS to allow for credit generation and trading, and we will develop a credit trading program under the full RFS program rule. Today's rule allows for the industry to comply with the default standard on a collective basis, providing no basis for setting up an individual credit generation and trading program, as will be done for the long term RFS program. For the default standard in

[13] The Monthly Energy Review for March 2007 is expected to contain data through December 2006.

[14] Fuel ethanol consumption in trillion Btu must be converted into gallons using the higher heating value of 3.539 million Btu per barrel, per Table A1.

2006, companies do not have an individual standard to meet, so there is no basis for determining that they have done more or less than is required of them individually, which is the basis for generating or needing credits. Therefore, under today's rule, individual companies that exceed the 2.78 percent default standard do not generate credits, and there are no credits to trade or sell to other companies. Also, no credits are generated that can be used toward compliance with RFS requirements after 2006.

V. Public Participation

We request comments on all aspects of this proposal. The comment period for this proposed rule will end 30 days after publication in the **Federal Register**.

If you would like to speak at a public hearing on this proposed rule, please contact us within 15 days of publication of the proposal in the **Federal Register**, as described above in **DATES**. If a request to speak at a public hearing is received, we will hold the hearing on the 30th day after publication of the proposal in the **Federal Register**. An announcement of the public hearing will be made on our Web site at *http://www.epa.gov/otaq/renewablefuel.htm.* The public hearing would start at 10 a.m. local time at the EPA Office Building, 2000 Traverwood, Ann Arbor, MI 48105, or at an alternate site nearby.

To contact us for updated information about the possibility of a public hearing, please see the **FOR FURTHER INFORMATION CONTACT** section.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days beforehand. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow for the public to supplement the record. You may make arrangements for copies of the transcript directly with the court reporter.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''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.''

It has been determined that this rule will not have an annual effect on the economy of $100 million or more, and that it is not otherwise a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. EPA has estimated that renewable fuel use in 2006 will be sufficient to meet the default standard of 2.78 percent. Therefore, individual refiners, blenders, and importers are already on track to meet rule obligations through normal market-driven incentives.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There would not be a burden on liable parties because the Agency would determine compliance immediately following 2006 using data on gasoline and renewable fuel consumption available from the Energy Information Administration and other information that may be readily available.

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 (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA proposes that the default provision for 2006 be interpreted as imposing a collective obligation on the regulated parties. This means that if the average volume percent of renewable fuel used in 2006 meets or exceeds 2.78 percent, then the standard is satisfied for all responsible parties, regardless of their individual efforts towards that goal. In light of the fact that refiners, blenders, and importers would together be responsible for meeting the default 2.78 percent standard and industry on average will very likely use more than 2.78 percent renewable fuel in 2006 based solely on market forces, there will be no significant economic impact on small entities. No individual refiner, blender, or importer would be responsible for establishing compliance with the default standard for the specific gasoline it produces in 2006,

and any deficit carryover to 2007 would be minimal if there is one at all. We continue to be interested in the potential impacts of our proposed rules on small entities and welcome comments on issues related to such impacts. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for State, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. EPA has estimated that renewable fuel use in 2006 will be sufficient to meet the default standard of 2.78 percent. Therefore, individual refiners, blenders, and importers are already on track to meet rule obligations through normal market-driven incentives. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule reflects a nationwide program that does not impose directives specific to any particular State or region. Thus, Executive Order 13132 does not apply to this 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 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications as specified in Executive Order 13175. This rule would be implemented at the Federal level and collectively apply to refiners, blenders, and importers. EPA expects these entities to meet the standards on a collective basis in 2006 even without imposition of any RFS obligations on any individual party. 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: ''Protection of Children from Environmental health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is not economically significant and is not based on health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We believe that the normal practices of liable parties will result in the default RFS standard being met collectively.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

VII. Legal Authority

Statutory authority for the rules proposed today can be found in 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Reporting and recordkeeping requirements.

Dated: December 22, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, we propose to amend part 80 of title 40 of the Code of Federal Regulations to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

2. Subpart K is added to read as follows:

Subpart K—Renewable Fuel Standard

§ 80.1100 How is the statutory default requirement for 2006 implemented?

(a) *Definitions.* (1) *Renewable fuel.* (i) Renewable fuel means motor vehicle fuel that is used to replace or reduce the quantity of fossil fuel present in a fuel mixture used to operate a motor vehicle, and which

(A) Is produced from grain, starch, oil seeds, vegetable, animal, or fish materials including fats, greases, and oils, sugarcane, sugar beets, sugar components, tobacco, potatoes, or other biomass, or

(B) Is natural gas produced from a biogas source, including a landfill, sewage waste treatment plant, feedlot, or other place where decaying organic material is found.

(ii) The term ''renewable fuel'' includes cellulosic biomass ethanol, waste derived ethanol, biodiesel, and any blending components derived from renewable fuel.

(2) *Cellulosic biomass ethanol* means ethanol derived from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste. The term also includes any ethanol produced in facilities where animal wastes or other waste materials are digested or otherwise used to displace 90 percent or more of the fossil fuel normally used in the production of ethanol.

(3) *Waste derived ethanol* means ethanol derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste.

(4) *Small refinery* means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(5) *Biodiesel* means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act. It includes biodiesel derived from animal wastes (including poultry fats and poultry wastes) and other waste materials, or biodiesel derived from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.

(b) *Renewable Fuel Standard for 2006.* The percentage of renewable fuel in the total volume of gasoline sold or dispensed to consumers in 2006 in the United States shall be a minimum of 2.78 percent on an annual average volume basis.

(c) *Responsible parties.* Parties collectively responsible for attainment of the standard in paragraph (b) of this section are refiners (including blenders) and importers of gasoline. However, a party that is a refiner only because he owns or operates a small refinery is exempt from this responsibility.

(d) *EPA determination of attainment.* EPA will determine after the close of 2006 whether or not the requirement in paragraph (b) of this section has been met. EPA will base this determination on information routinely published by the Energy Information Administration on the annual domestic volume of gasoline sold or dispensed to U.S. consumers and of ethanol produced for use in such gasoline, supplemented by readily available information concerning the use in motor fuel of other renewable fuels such as cellulosic biomass ethanol, waste derived ethanol, biodiesel, and other non-ethanol renewable fuels.

(1) The renewable fuel volume will equal the sum of all renewable fuel volumes used in motor fuel, provided that:

(i) One gallon of cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel; and

(ii) Only the renewable fuel portion of blending components derived from renewable fuel shall be counted towards the renewable fuel volume.

(2) If the nationwide average volume percent of renewable fuel in gasoline in 2006 is equal to or greater than the standard in paragraph (b) of this section, the standard has been met.

(e) *Consequence of nonattainment in 2006.* In the event that EPA determines that the requirement in paragraph (b) of this section has not been attained in 2006, a deficit carryover volume shall be added to the renewable fuel volume obligation for 2007 for use in calculating the standard applicable to gasoline in 2007.

(1) The deficit carryover volume shall be calculated as follows:

$$DC = V_{gas} \cdot (R_s - R_a)$$

Where:

DC = Deficit carryover in gallons of renewable fuel

V_{gas} = Volume of gasoline sold or dispensed to U.S. consumers in 2006, in gallons

R_s = 0.0278

R_a = Ratio of renewable fuel volume divided by total gasoline volume determined in accordance with paragraph (d)(2) of this section.

(2) There shall be no other consequence of failure to attain the standard in paragraph (b) of this section in 2006 for any of the parties in paragraph (c) of this section.

[FR Doc. 05–24610 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0518; FRL–7752–1]

Hexythiazox; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-

thiazolidine moiety (expressed as parent) in or on grape; citrus fruit, crop group 10 (CA, AZ, TX only); citrus, oil; citrus, dried pulp; fruit, pome, group 11; apple, wet pomace; and cattle, sheep, goat, and horse meat byproducts under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: Comments must be received on or before January 30, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0518, by one of the following methods:

- *Federal eRulemaking Portal http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.
- *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number EPA–HQ–OPP–2005–0518.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number EPA–HQ–OPP–2005–0518.
- *Hand delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0518. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0518. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/docket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through the EDOCKET and or regulations.gov; your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9369; e-mail address: *odiott.olga@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background and Statutory Findings

In the **Federal Register** of June 1, 2005 (70 FR 31455) (FRL–7711–8), EPA issued a notice under section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6569) by Gowan Company, 370 S. Main St., Yuma, AZ 85365. The petition requested that 40 CFR 180.448 be amended by establishing a tolerance for combined residues of the insecticide hexythiazox and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parent), in or on grapes at 1.0 part per million (ppm), raisins at 4.0 ppm, citrus at 0.5 ppm, and citrus oil at 2.0 ppm. This notice included a summary of the petition prepared by Gowan Company, the registrant. There were no comments received in response to the notice of filing.

EPA is issuing this action as a proposed rule (rather than a final rule) because after review of the initial petition and the Notice of Filing the Agency has determined that:

- The existing tolerance for apple, wet pomace must be revised to 2.5 ppm.
- The existing tolerances for cattle, goat, sheep, and horse meat byproducts must be revised to 0.12 ppm.

EPA has also determined that:

- The existing tolerances for apple and pear can be deleted since a tolerance is being proposed for the entire pome fruit group.
- The proposed tolerances for grapes at 1.0 ppm; citrus fruit, crop group 10 at 0.5 ppm; and citrus oil at 2.0 ppm should be revised to 0.75 ppm, 0.35 ppm, and 0.90 ppm, respectively.
- Tolerances for citrus, dried pulp at 1.5 ppm; and fruit, pome, group 11 at 1.7 ppm are necessary.
- The proposed tolerance for raisins is not necessary.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances of November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of hexythiazox on grape at 0.75 ppm; citrus fruit, crop group 10 (CA, AZ, TX only) at 0.35 ppm; citrus, oil at 0.90 ppm; citrus, dried pulp at 1.5 ppm; fruit, pome, group 11 at 1.7 ppm; apple, wet pomace at 2.5 ppm; and cattle, sheep, goat, and horse meat byproducts at 0.12 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by hexythiazox as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of April 18, 2001 (66 FR 19879) (FRL–6778–8). Since that time a micronucleus assay study has been submitted and reviewed. Based on the submitted studies hexythiazox has been classified as nonmutagenic.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for inter-species differences and 10X for intra-species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for inter-species differences and 10X for intra-species differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{6} or one in a million). Under certain specific circumstances, MOE calculations will

be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for hexythiazox used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR HEXYTHIAZOX FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute dietary - females (13-50 years) of age	NOAEL = 240 mg/kg/day UF = 100 aRfD = 2.4 mg/kg/day	FQPA SF = 1x aPAD = 2.4 mg/kg/day	Developmental Toxicity study - rat Developmental LOAEL = 720 mg/kg/day based on delayed ossification
Acute dietary (general population including infants and children)	A dose and endpoint attributable to a single exposure were not identified from the available oral toxicity studies, including maternal toxicity in the developmental toxicity studies.		
Chronic dietary (all populations)	NOAEL= 2.5 mg/kg/day UF = 100 cRfD = 0.025 mg/kg/day	FQPA SF = 1x cPAD = 0.025 mg/kg/day	One–year toxicity feeding study - dog LOAEL = 12.5 mg/kg/day based on increased absolute and relative adrenal weights and associated adrenal histopathology
Cancer (oral, dermal, inhalation)	Category C (possible human carcinogen)	Q_1*= $2.22x10^{-2}$mg/kg/day^{-1}	Increases in incidence of malignant and combined benign/malignant liver tumors in female mice
Short-term dermal (1-30 days) (occupational)	Oral maternal NOAEL = 240 mg/kg/day (dermal absorption rate = 2%)	LOC for MOE = 100 (occupational)	Developmental toxicity study - rat LOAEL = 720 mg/kg/day based on decreased maternal body weight gain during gestation days 7-17 and decreased food consumption on gestation days 9-12
Short-term inhalation (1-30 days)(occupational)	Oral maternal NOAEL= 240 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (occupational)	Developmental toxicity study - rat LOAEL = 720 mg/kg/day based on decreased maternal body weight gain during gestation days 7-17 and decreased food consumption on gestation days 9-12

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.448) for the combined residues of hexythiazox, in or on a variety of raw agricultural commodities ranging from 0.10–10 ppm. Tolerances have also been established for these same compounds in/on milk (0.02 ppm), ruminant fat (0.02 ppm), and ruminant meat byproducts (0.02 ppm) as a result of secondary residues. Risk assessments were conducted by EPA to assess dietary exposures from hexythiazox in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Lifeline™ (ver. 3.00) and Dietary Exposure Evaluation Model - Food Consumption Intake Database (DEEM-FCID™, ver. 2.03) models were used for the assessments. Both of these models use food consumption data from the U. S. Department of Agriculture (USDA's) 1994–1996, and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues, 100% crop treated, and DEEM™ (ver 7.81) default processing factors for all plant and livestock residues.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Lifeline™ (ver. 3.00), and DEEM-FCID™, (ver. 2.03) models evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Average percent crop treated (PCT) estimates for several registered commodities, projected PCT estimates for proposed commodities, average field trial residues, FDA monitoring data for stone fruit (excluding cherry) and pome fruit,

experimentally determined processing factors when available, and anticipated livestock residues (dietary burden calculated using average field trial and PCT estimates).

iii. *Cancer*. The cancer dietary analyses were also conducted using the Lifeline™ (ver. 3.00), and DEEM-FCID™, (ver. 2.03) models. The cancer dietary analyses assumed the same plant and livestock residues as that of the chronic analyses.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. Average values for PCT data were used in the chronic and cancer analyses for the following commodities with established tolerances: <1% for almonds, apples, apricots, cherries, prunes, plums, and walnuts; 5% for nectarines, peaches, and pears; 10% for dates; and 20% for strawberries. Projected average PCT values were used for proposed commodities as follows: 23% for grapes and 21% for oranges.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, PCT estimates are derived from available federal, state, and private market survey data. For existing crop sites on pesticide registrations (''existing use''), EPA uses an average PCT for chronic dietary exposure estimates. The average PCT figure is derived by combining available federal, state, and private market survey data on the existing use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary exposure estimates. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent six years. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation.

The Agency projects PCT for a new pesticide use by assuming that the PCT for the pesticide's initial five years will not exceed the average PCT of the dominant pesticide (the one with the largest PCT) within its chemical type over three latest available years. For grapes hexythiazox was compared with imidacloprid. For oranges, hexythiazox was compared with abamectin and S-methoprene. The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for raw PCT data because it is non-proprietary and directly available without computation. This method of projecting PCT for a new pesticide, with or without regard to specific pest(s), produces an upper-end projection that is unlikely, in most cases, to be exceeded in actuality because the dominant pesticide is well-established and accepted by farmers. Factors that bear on whether a projection based on the dominant pesticide could be exceeded are whether the new pesticide is more efficacious or controls a broader spectrum of pests than the dominant pesticide within its similar type, whether it is more cost-effective than the dominant pesticide, and whether it is likely to be readily accepted by growers and experts.

As to Conditions 2 and Condition 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which hexythiazox may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for hexythiazox in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of hexythiazox.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

The acute, chronic, and cancer analyses incorporated modeled surface water and/or ground water estimates generated using PRZM/EXAMS and SCI-GROW, respectively. The SCI-GROW model evaluated the highest registered/proposed application rate. The PRZM/EXAMS model evaluated all registered/proposed application scenarios. The PRZM/EXAMS evaluation considered potential spatial variation by using model scenarios which represent a combination of specific agronomic, soil, and climatological parameters which are geographically specific.

Based on the PRZM/EXAMS and SCI-GROW models the estimated drinking water concentrations (EDWCs) of hexythiazox for acute exposures are estimated to be 4.23 parts per billion (ppb) for surface water and 0.00503 ppb for ground water. The EDWCs for chronic exposures are estimated to be 2.26 ppb for surface water and 0.00503 ppb for ground water. The EDWCs for cancer are estimated to be 1.72 ppb for surface water and 0.00503 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Hexythiazox is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to hexythiazox and any other substances and hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that hexythiazox has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology data base indicates no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to hexythiazox.

3. *Conclusion*. EPA determined that the special FQPA SF to protect infants and children should be removed. The recommendation is based on the following:

- The toxicology data base for hexythiazox is considered complete for selecting toxicity endpoints for risk assessment. The toxicity profile of hexythiazox can be characterized for all effects, including potential developmental, reproductive and neurotoxic effects.
- Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.
- There is no evidence of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to hexythiazox.

E. Aggregate Risks and Determination of Safety

Acute, chronic, and cancer modeled drinking water estimates were incorporated directly into the aggregate dietary analysis, rather than using back-calculated drinking water levels of comparison (DWLOCs). EPA is no longer comparing EDWCs generated by water quality models with DWLOCs. Instead, EPA is now directly incorporating the actual water quality model output concentrations into the risk assessment. This method of incorporating water concentrations into our aggregate assessments relies on actual CSFII-reported drinking water consumption and more appropriately reflects the full distribution of drinking water concentrations.

The acute analysis assumed the PRZM/EXAMS 1 in 10–year annual peak drinking water concentration. The chronic analysis assumed the PRZM/EXAMS 1 in 10–year annual mean concentration. These estimates were higher than the SCI-GROW estimates.

The DEEM-FCID™ cancer analysis assumed the PRZM/EXAMS 30–year annual mean concentration (which was higher than the SCI-GROW estimate). Since Lifeline™ allows for the assignment of different drinking water concentrations for those individuals in households with private wells, the Lifeline™ analysis incorporated both the PRZM/EXAMS 30–year annual mean concentration and the SCI-GROW concentration. The Lifeline™ analysis assumed the SCI-GROW concentration for individuals obtaining drinking water from individual wells and the PRZM/EXAMS 30–year annual mean concentration for individuals in households receiving drinking water from public water systems and other sources.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the resulting Lifeline™ and DEEM-FCID™ exposure estimates were <1% of the aPAD for females 13-49 years old. An acute endpoint for the remaining population subgroups was not identified. EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HEXYTHIAZOX (FOOD + DRINKING WATER)

Population Subgroup	aPAD (mg/kg/day)	%aPAD		Exposure (mg/kg/day)	
		DEEM-FCID	Lifeline	DEEM-FCID	Lifeline
Females (13-49 years old)	2.4	<1	<1	0.010176	0.0120

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, the resulting Lifeline™ and DEEM-FCID™ exposure estimates were <1% of the cPAD for the U.S. population, <1% of the cPAD for all infants and 1% of the cPAD for children 1-2 years old, the children subpopulation at greatest exposure]. There are no residential uses for hexythiazox that result in chronic residential exposure to hexythiazox. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HEXYTHIAZOX (FOOD + DRINKING WATER)

Population Subgroup	cPAD (mg/kg/day)	%cPAD		Exposure (mg/kg/day)	
		DEEM-FCID	Lifeline	DEEM-FCID	Lifeline
General U.S. population	0.025	<1	<1	0.000110	0.000094
All Infants <(1 year old)	0.025	<1	<1	0.000217	0.000185
Children (1-2 years old)	0.025	1	1	0.000267	0.000251

3. *Aggregate cancer risk for U.S. population*. Based on the exposure assumptions described in this unit the resulting cancer DEEM-FCID™ and Lifeline™ dietary exposure estimates for the U.S. population yielded a cancer risk of 2.30 in 1 million and 2.03 in 1 million, respectively. DEEM-FCID™ resulted in a higher cancer risk estimate due to differing drinking water assumptions described in this unit (Lifeline™ permits incorporation of the entire PRZM-EXAMS distribution when conducting a cancer analysis while DEEM-FCID™ permits only a point estimate). Based on a the DEEM-FCID™ analysis, the major contributors to the cancer risk were water (35% of total exposure), strawberry (15% of total exposure), grape (14% of total exposure), field corn (13% of total exposure), citrus (9% of total exposure), caneberry (5% of total exposure), and hop (5% of total exposure). The remaining commodities combined for 4% of the total exposure.

Under the reasonable certainty of no harm standard in FFDCA section 408(b)(2)(A)(ii), cancer risks must be no greater than negligible. EPA has consistently interpreted negligible cancer risks to be risks within the range of an increased cancer risk of 1 in 1 million. Risks as high as 3 in 1 million have been considered to be within this risk range. EPA concludes that the estimated cancer risk for hexythiazox is within the negligible risk range. The Agency notes that hexythiazox has been classified as a possible human carcinogen based on increased incidence of liver tumors in female mice. No chemical-related oncogenic effects were reported in male mice or in male and female rats, and hexythiazox has been classified as nonmutagenic. A summary of the cancer dietary exposure estimates for hexythiazox are shown in Table 4 of this unit:

TABLE 4.—AGGREGATE CANCER DIETARY EXPOSURE AND RISK FOR HEXYTHIAZOX (FOOD + DRINKING WATER)

Population Subgroup	Q_1*1	Exposure (mg/kg/day)		Risk	
		DEEM-FCID	Lifeline	DEEM-FCID	Lifeline
General U.S. population	0.022	0.000104	0.00091	2.30×10^{-6}	2.03×10^{-6}

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to hexythiazox residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The Pesticide Analytical Manual Volume II (PAM II) of the Food and Drug Administration (FDA) includes suitable analytical methods for the determination of hexythiazox and metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (AMR-985–87) in pome fruit, grape, and citrus, livestock tissue, and milk.

B. International Residue Limits

The Codex and EPA tolerance expression differ; therefore, harmonization is not possible

C. Conditions

As a condition of registration the registrant must submit the following data:

- Apple and pear field trial data for the emulsifiable concentrate (EC) formulation. The recommended tolerance may overestimate actual expected residues following application of hexythiazox as labeled since is based on an exaggerated rate from the wettable powder residue trial and the maximum factor by which the EC formulation

exceeded the WP formulation in the apple side-by-side field trials.

- An orange processing study.

V. Conclusion

Tolerances are proposed for combined residues of hexythiazox (trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide) and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parent) in grape at 0.75 ppm; citrus fruit, crop group 10 (CA, AZ, TX only) at 0.35 ppm; citrus, oil at 0.90 ppm; citrus, dried pulp at 1.5 ppm; fruit, pome, group 11 at 1.7 ppm; apple, wet pomace at 2.5 ppm; and cattle, sheep, goat, and horse meat byproducts at 0.12 ppm.

VI. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities. Establishing a tolerance, in effect, removes the statutory bar on the use of a pesticide on the specified crops and thus has no negative economic impact. In addition, the Agency has determined that this action will not have a substantial direct effect 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 Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.448 is amended by removing the commodities ''apple'' and ''pear'' and alphabetically adding new commodities to the table in paragraphs (a) and (c) to read as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Citrus, dried pulp	1.5
Citrus, oil	0.90
* * *	* *
Fruit, pome, group 11	1.7
* * *	* *
Grape	0.75
* * *	* *

* * * * *

(c) * * *

Commodity	Parts per million
* * *	* *
Fruit, citrus group 10 (CA, AZ, TX only)	0.35

* * * * *

3. Section 180.448 is amended by revising the following commodities in the table in paragraph (a) to read as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Apple, wet pomace	2.5

Commodity	Parts per million
* * *	* *
Cattle, meat byproducts	0.12
* * *	* *
Goat, meat byproducts ...	0.12
* * *	* *
Horse, meat byproducts	0.12

Commodity	Parts per million
* * *	* *
Sheep, meat byproducts	0.12

* * * * *

[FR Doc. E5–8037 Filed 12–29–05; 8:45 am]
BILLING CODE 6560–50–S

Notices

Federal Register
Vol. 70, No. 250
Friday, December 30, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle National Forest, Idaho—Supplemental West Gold EIS Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) for the West Gold Project. The Notice of Availability of the DEIS for the West Gold project was published in the **FEDERAL REGISTER** (67 FR 31801) on May 10, 2002 and the notice of the Final EIS (67 FR 71165) was published on November 29, 2002. The Record of Decision (ROD) on this project was administratively appealed to the Regional Forester per 36 CFR part 215. The Regional Forester affirmed this decision on February 27, 2003. However, due to information that has been identified since the availability of the FEIS and ROD it has been determined that there is a need for a supplement. On May 18, 2005, the ROD for the West Gold project was withdrawn. The purpose for the withdrawal was to further address analysis issues raised through the recent opinion issued through the U.S. Court of Appeals for the Ninth Circuit in Lands Council v. Powell, 395 F.3d 1015–1046 (9th Cir. 2005).

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)). There was extensive public involvement in the development of the proposed action, the 2002 DEIS, and the FEIS, and the Forest Service is not inviting comments at this time.

ADDRESSES: Sandpoint Ranger District, 1500 Highway 2, Suite 110, Sandpoint, Idaho 83864.

FOR FURTHER INFORMATION CONTACT: A.J. Helgenberg—West Gold Supplement Project Team Leader, USDA Forest Service, Sandpoint Ranger District, 208–265–6643.

SUPPLEMENTARY INFORMATION: The West Gold ROD was released with the FEIS in late November 2002, and the legal notice of decision was published November 29, 2002. The ROD selected a modification of Alternative C and authorized vegetative treatments on approximately 1,338 acres through a combination of intermediate silvicultural prescriptions, regeneration harvest and underburning treatments, and an estimated 382 acres of precommercial thinning.

The ROD authorized construction of approximately 0.16 miles of road and a helicopter landing to facilitate the vegetation treatment. To improve watershed conditions the decommissioning of an estimated 1.4 miles of existing classified road, and 0.7 miles of existing unclassified road, as well as 27.9 miles of road maintenance was authorized.

The ROD was appealed. Following administrative review, the decision was affirmed and the appellant's requested relief denied by the Appeal Deciding Officer for the Northern Region of the USDA Forest Service on February 27, 2003. On April 21, 2003, Lands Council filed a lawsuit for a temporary restraining order and preliminary injunction. In light of the lawsuit, the Forest Service elected to not proceed with any ground disturbing activities related to timber harvesting or road construction. However, to provide more off road vehicle opportunities,the gates on roads 2707A and 2707AA were modified to allow dry season use by motorized vehicles less than 50″.

The Supplemental EIS will contain additional information relating to water quality and fisheries analysis, wildlife analysis, vegetation data including gold growth, and on the effects of past and reasonably foreseeable activities (including timber harvest and mine reclamation activities). The SEIS is intended to provide additional evaluation of the effects of activities on the natural resources listed above, and provide that information to the public.

The purpose and need for the West Gold project was derived from scientific information and assessments, and from field reviews and surveys of the resources in the West Gold drainage. The West Gold project was developed to improve the health and productivity of terrestrial and aquatic habitats by restoring desired forest cover, structure, pattern, and species composition across the landscape where they are outside natural or accepted ranges, providing for wildlife habitat diversity, restoring fire as an ecological process, maintaining and improving West Gold Creek's aquatic habitat by reducing existing and potential sediment risks from roads, and managing current and additional motorized recreation opportunities while protecting resource values such as wildlife and water.

The need to manage current and additional motorized recreation activities was met under the auspice of the November 2002 ROD, and will not be re-explored in the SEIS.

Responsible Official

Ranotta K. McNair, Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur D'Alene, Idaho 83815.

Nature of Decision To Be Made

The Forest supervisor of the Idaho Panhandle National Forests will decide whether or not to implement this project, and if so, in what manner.

Comments

A Draft SEIS is expected to the public for review and comment in February 2006; and a Final SEIS in May 2006. The mailing list for this project will include those individuals, agencies, and organizations on the mailing list for the 2002 West Gold EIS. The comment period on the Draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register.** In accordance with 36 CFR 215.5, as published in the **Federal Register,** Volume 68 no. 107, June 4, 2003, the Draft SEIS comment period will be the designated time in which ''substantive'' comments will be considered. In addition, the public is encouraged to contact or visit the Forest Service officials during the analysis and prior to the decision. The Forest Service will continue to seek information, comments, and assistance from Federal, Tribal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addressees of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

The Idaho Panhandle National Forests Supervisor will make a decision on the project after considering comments and responses, environmental consequences discussed in the Final Supplemental EIS, and applicable laws, regulations and policies. The decision and supporting reasons will be documented in a Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 19, 2005.

Ranotta K. McNair,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 05–24526 Filed 12–29–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

90-Day Comment Period on the Draft Cimarron and Comanche National Grasslands Land Management Plan (Draft Grasslands Plan)

AGENCY: The Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands, Forest Service, USDA.

Authority: 36 CFR 219.9(b)(2).

Notice: Commencement of 90-day comment period on the Draft Land Management Plan for the Cimarron and Comanche National Grasslands.

SUMMARY: The Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands have commenced a 90-day comment period, effective December 28, 2005, on the Draft Cimarron and Comanche National Grasslands Land Management Plan and supporting documents, including the environmental assessment (EA) and the finding of no significant impact (FONSI).

DATES: December 21, 2005.

FOR FURTHER INFORMATION CONTACT: Barb Masinton, 719–553–1475.

SUPPLEMENTARY INFORMATION: The Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands (PSICC) has commenced a 90-day comment period, effective December 28, 2005, on the Draft Cimarron and Comanche National Grasslands Management Plan (Draft Grasslands Plan); environmental assessment (EA) and finding of no significant impact (FONSI); and supporting documents for the Cimarron and Comanche National Grasslands. The comment period is from December 28, 2005 through April 3, 2006.

You are invited to review and comment on the Draft Grasslands Plan, EA/FONSI, and supporting documents by providing the Responsible Official (the Forest Supervisor) with information that you believe should be addressed in the final stages of the planning process. We are especially interested in comments on the Draft Grasslands Plan.

The documents that are available for review and comment include the following:

1. Draft Grasslands Plan, including applicable maps
2. The EA and FONSI
3. Evaluations of existing resource conditions and trends
4. Ecological sustainability evaluations
5. Species diversity evaluations
6. Economic and social sustainability evaluations
7. Wild and scenic river eligibility report
8. Scenery management systems evaluation
9. Roads analysis report
10. Reports on the historic range of variation for vegetation and watersheds

All documents can be viewed, accessed, and downloaded at the following Web site: *http://www.fs.fed.us/r2/psicc/projects/forest_revision/.* The Draft Grasslands Plan and the EA/FONSI are also available, by request, in paper copy or on CD.

Only those persons or organizations who participate in this 90-day comment period may object to the final Plan. Full participation in the planning process requires that written comments be received by the Responsible Official during the 90-day comment period. The opportunity to object to the final Plan will be during the 30-day objection period before Plan approval (36 CFR 219.13(a)). The most helpful comments would be about concerns, suggestions, or additions related to the following questions:

1. Does the Draft Grasslands Plan clearly state the desired conditions of the Grasslands and are they realistic and achievable?
2. Does the Draft Grasslands Plan clearly state what ecological, economic, and social conditions are desired and why?
3. Can the Draft Grasslands Plan be implemented as written? If not, what changes are needed and what obstacles exist?
4. Is there additional, relevant scientific information that could be used in the analyses?
5. Would implementing the Draft Grasslands Plan lead to the achievement of the desired conditions? If not, tell us why not, and what changes are needed.
6. Is the Draft Grasslands Plan clear about what steps (objectives) will be taken to achieve or maintain the stated desired conditions? If not, what needs to be changed and how?
7. Do you believe that underlying assumptions and analyses that were used in developing the Draft Grasslands Plan are correct and based on factual information?

8. Have possible negative consequences, risks, or uncertainties been adequately considered? If not, what changes are needed?
9. Is the Draft Grasslands Plan consistent with laws, policies, and the multiple-use mission of the USDA Forest Service?

Please note that all comments, names, and addresses become part of the public record and are subject to FOIA, except for proprietary documents and information. If there is a possibility that you will file an objection during the objection process, we recommend that the names and addresses of the interested parties are included with the comments.

Comments should meet the following requirements:

1. State that the comment is filed in response to the 90-day comment period for the Draft Cimarron and Comanche National Grasslands Land Management Plan (Draft Grasslands Plan).
2. Identify the title of the document that your comment is a response to.
3. Clearly state your comment and include reasons, recommendations, and supporting information.

Comments must be postmarked by April 3, 2006. Comments can be sent by mail to: CC Grasslands Plan, 225 Bush Street, Suite 1700, San Francisco, CA 94104–4207. Comments by e-mail should be sent to: *ccgrassplan@caet.esassoc.com*. Comments may also be faxed to: 415–896–0332.

Dated: December 21, 2005.

Robert J. Leaverton,

Forest Supervisor.

[FR Doc. 05–24645 Filed 12–29–05; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakutat Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakutat Resource Advisory Committee will meet in Yakutat, Alaska. The purpose of the meeting is continue business of the Yakutat Resource Advisory Committee. The committee was formed to carry out the requirements of the Secure Rural Schools and Self-Determination Act of 2000. The agenda for this meeting is to review submitted project proposals and consider recommending projects for funding. Project proposals are due by January 13, 2006 to be considered at this meeting.

DATES: The meeting will be held January 20, 2006, from 6–9 p.m. and will continue on January 21, 2006, from 9–12 a.m., if necessary.

ADDRESSES: The meeting will be held at the Kwaan Conference Room, 712 Ocean Cape Drive, Yakutat, Alaska. Send written comments to Tricia O'Connor, c/o Forest Service, USDA, P.O. Box 327, Yakutat, AK 99689, (907) 784–3359 or electronically to *poconnor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Tricia O'Connor, District Ranger and Designated Federal Official, Yakutat Ranger District, (907) 784–3359.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring resource projects or other Resource Advisory Committee matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 13, 2006 will have the opportunity to address the Council at those sessions.

Dated: December 19, 2005.

Patricia M. O'Connor,

District Ranger, Yakutat Ranger District, Tongass National Forest.

[FR Doc. 05–24647 Filed 12–29–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Kootenai National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Kootenai National Forest proposes to begin charging a $25 day use fee for rental of the Bull River Pavilion (10 a.m.–10 p.m.). An additional $15 fee will be charged for use past 10 p.m. to be paid at the district. Rentals of other day use sites on the Kootenai National Forest show that the public appreciate and enjoy the availability of reserving and using group site facilities. Funds from the rental will be used for the continued operation and maintenance of the Bull River Pavilion.

DATES: Bull River Pavilion will become available for rent July 1, 2006. Comments, concerns, or questions about this new fee must be submitted by January 30, 2006.

ADDRESSES: Forest Supervisor's Office, 1101 U.S. Hwy. 2 West, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Bill Fansler, Forest Recreation Officer, 406–293–6211.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fees are established. The intent of this notice is to give publics an opportunity to comment if they have concerns or questions about new fees. The Kootenai National Forest currently has four other groups sites that can be reserved. An analysis of Bull River Pavilion has shown that people desire having this sort of recreation experience on the Kootenai National Forest. A market analysis indicated that the $25 day use fee with the $15 additional night use fee is both reasonable and acceptable for this sort of unique recreation experience. People want to rent Bull River Pavilion will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: December 21, 2005.

Bob Castaneda,

Kootenai National Forest Supervisor.

[FR Doc. 05–24631 Filed 12–29–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1431]

Expansion of Foreign-Trade Zone 262, Southaven, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Northern Mississippi FTZ, Inc., grantee of Foreign-Trade Zone 262, submitted an application to the Board for authority to expand FTZ 262 to include two additional parcels at the DeSoto Trade Center in Southaven (DeSoto County), Mississippi, within the Memphis Customs port of entry (FTZ Docket 31–2005; filed 7/12/05);

Whereas, notice inviting public comment was given in the **Federal**

Register (70 FR 41681, 7/20/05) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 262 is approved, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 21st day of December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E5–8146 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 65–2005]

Foreign–Trade Zone 40 – Cleveland, Ohio; Application for Manufacturing Authority, DEMAG Plastics Group, (Plastic Production Machinery), Strongsville, Ohio

SUPPLEMENTARY INFORMATION: An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Cleveland–Cuyahoga County Port Authority, grantee of FTZ 40, requesting manufacturing authority within the general–purpose zone for the manufacturing and warehousing facilities of the DEMAG Plastics Group (DEMAG), located in Strongsville, Ohio. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 20, 2005.

The DEMAG facility (350 employees) is located within Site 6B of FTZ 40, the Progress Drive Business Park, located at 11792 Alameda Drive, Strongsville, Cuyahoga County. The facility will be used for the manufacturing and warehousing of injection molding machines, single and twin screw extruders machinery, blow molding machines, injection molding clamp cylinders, extrusion feedscrew machinery, injection molding barrels and extrusion barrels machinery (HTS 8477.10, 8477.20, 8477.30, 8477.90, duty rate 3.1%). Components and materials sourced from abroad (representing 20–45% of all parts consumed in manufacturing) include: tubes; pipes; hoses; nonadhesive film, plates, sheets, foil and strip; plastic closures; handles and knobs of plastic; plastic gaskets; washers and seals; other articles of plastic; gaskets; washers; seals; printed matter; safety glass; flanges for tubes/pipes; iron or steel threaded sleeves, elbow, bends and other articles; iron/steel fittings; screws; bolts; nuts; washers; springs; cotters and cotter pins; nonthreaded articles of iron/steel; coppers, rivets and similar articles; aluminum articles; and operated non–adjustable spanners; base metal locks and keys; mountings and similar articles; base metal sign plates; hydraulic power engines and motors; fuel, lubricating or cooling pumps; rotary pumps; parts of pumps; heat exchanger units; filtering or purifying machinery and parts; pulley tackle and hoists; ADP thermal transfer printers; ADP magnetic disk drive storage units; injection molding machines; parts of machinery; pressure–reducing, oleohydraulic transmission and check valves; taps, cocks, valves and their parts; ball bearings; cylindrical roller bearings; gears; clutches; parts of gearing; DC generators; AC motors; electric rotary and static converters; electrical transformers; electromagnetic work holders; lithium primary cells; electric resistors; pre–recorded media; indicator panels; electric sound or visual signaling apparatus; fixed capacitors; electric variable resistors; printed circuits; fuses; electrical overload protectors and apparatus; relays; switches; coaxial connectors; plugs and sockets; electrical terminals and apparatus; boards, panels, consoles, desks; other parts; electrical filament lamps; light–emitting diodes; photosensitive semiconductor devices; other electrical machines; insulated conductors; liquid–filled thermometers; electrical instruments; revolution counters; instruments and apparatus; automatic thermostats; and, automatic regulating instruments (HTS 3917.23, 3920.99, 3923.50, 3926.90, 4016.93, 4901.99, 4911.10, 7007.19, 7007.29, 7307.91, 7307.92, 7307.99, 7318.15, 7318.16, 7318.19, 7318.21, 7318.22, 7318.24, 7318.29, 7320.90, 7326.90, 7415.29, 7616.99, 8204.11, 8301.40, 8301.70, 8302.41, 8302.49, 8310.00, 8412.29, 8413.30, 8413.60, 8413.91, 8419.50, 8421.29, 8421.39, 8421.99, 8425.11, 8471.60, 8471.70, 8477.10, 8477.90, , 8479.90, 8481.10, 8481.20, 8481.30, 8481.80, 8481.90, 8482.10, 8482.50, 8483.40, 8483.60, 8483.90, 8501.31, 8501.40, 8501.51, 8501.52, 8502.40, 8504.32, 8504.40, 8505.90, 8506.50, 8516.80, 8524.99, 8531.20, 8531.80, 8532.29, 8533.40, 8536.10, 8536.30, 8536.41, 8536.49, 8536.50, 8536.69, 8536.90, 8537.10, 8538.90, 8539.29, 8541.40, 8543.89, 8544.41, 8544.49, 8544.59, 9025.11, 9026.20, 9029.10, 9030.39, 9030.89, 9030.90, 9032.10, 9032.89, 9032.90 duty rate ranges from duty–free to 9 %).

FTZ procedures would exempt DEMAG from Customs duty payments on the foreign components used in export production. The company anticipates that some 10–15 percent of the plant's shipments will be exported. On its domestic sales, DEMAG would be able to choose the duty rates during customs entry procedures that apply to finished plastic production machinery (3.1%) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is February 28, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 15, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Export Assistance Center, 600 Superior Ave. East, Suite 700, Cleveland, Ohio 44114.

Dated: December 20, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–8137 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1429]

Expansion of Foreign-Trade Zone 40, Cleveland, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40 to include a new site at the Taylor Woods Commerce Park (Site 12, 448 acres) in Lorain County, Ohio, within the Cleveland Customs port of entry (FTZ Docket 5–2005, filed 1/19/05);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 3672, 1/26/05) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 40 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000 acre limit for the overall zone project.

Signed at Washington, DC, this 21st day of December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E5–8143 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1430]

Expansion of Foreign-Trade Zone 40; Cleveland, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40—Site 6 to include a new site at the Progress Drive Business Park (Site 6B, 22 acres, 2 parcels) located in Strongsville, Ohio, within the Cleveland Customs port of entry (FTZ Docket 11–2005, filed 3/9/05);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 3672, 1/26/05) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000 acre limit for the overall zone project.

Signed at Washington, DC, this 21st day of December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–8144 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1428]

Expansion of Foreign-Trade Zone 40; Cleveland, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40 to include a new site at the Ashtabula Distribution Center, LLC (Site 11, 29 acres) in Ashtabula Township, Ohio, adjacent to the Cleveland Customs port of entry (FTZ Docket 59–2004, filed 12/17/04);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 74492, 12/29/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, Therefore, the Board hereby orders: The application to expand FTZ 40 is approved, subject to the FTZ Act and the Board's regulations, including section 400.28, and further subject to the Board's standard 2,000 acre limit for the overall zone project.

Signed at Washington, DC, this 21st day December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E5–8150 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 67–2005)

Foreign–Trade Zone 163 – Ponce, PR; Application for Expansion

SUPPLEMENTARY INFORMATION: An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by CODEZOL, C.D., grantee of FTZ 163, requesting authority to expand FTZ 163 to a site in Guaynabo, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended, (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 22, 2005.

FTZ 163 was approved on October 18, 1989 (Board Order 443, 54 FR 46097, 11/1/89), and expanded on April 18, 2000 (Board Order 1091, 65 FR 24676, 4/27/00) and June 9, 2005 (Board Order 1397, 70 FR 36117, 6/22/05). The zone project currently consists of the following sites in the Ponce, Puerto Rico, area: Site 1 (106 acres)-within the Port of Ponce area, including a site (11 acres) located at 3309 Avenida Santiago de los Caballeros, Ponce; Site 2 (191 acres, 5 parcels)-Peerless Oil & Chemicals, Inc., petroleum terminal facilities located at Rt. 127, Km. 17.1, Penuelas; Site 3 (13 acres, 2 parcels)-Rio Piedras Distribution Center located within the central portion of the Quebrada Arena Industrial Park, and the Hato Rey Distribution Center located within the northeastern portion of the

Tres Monjitas Industrial Park, San Juan; Site 4 (14 acres)-warehouse facility located at State Road No. 3, Km. 1401, Guayama (expires 10/1/04); Site 5 (256 acres, 34 parcels)-Mercedita Industrial Park located at the intersection of Route PR–9 and Las Americas Highway, Ponce; and, Site 6 (86 acres)-Coto Laurel Industrial Park located at the southwest corner of the intersection of Highways PR–56 and PR–52, Ponce.

The applicant is now requesting authority to expand the zone to include a site in Guaynabo, Puerto Rico. The proposed site consists of 17.2 acres and is located at State Road No. 1, Km 21.1 in Guaynabo.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is February 28, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 15, 2006).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, Midtown Bldg 10th Floor, 420 Ponce de Leon Ave, San Juan, PR 00918.

Dated: December 22, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–8132 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1427]

Approval of Manufacturing Authority Within Foreign-Trade Zone 105; North Kingstown, RI; Southeastern New England Shipbuilding Corporation (Shipbuilding)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Rhode Island Economic Development Corporation, grantee of FTZ 105, has requested authority on behalf of Southeastern New England Shipbuilding Corporation (Senesco) to construct and repair oceangoing vessels under FTZ procedures within FTZ 105—Site 2 (Quonset Business Park), North Kingstown, Rhode Island (Docket 21–2005, filed 5–16–2005);

Whereas, the application seeks FTZ authority to construct and repair tugboats, double-hulled liquid barges, and articulating tug barges;

Whereas, the proposed shipbuilding and repair activity would be subject to the ''Standard Shipyard Restriction'' (full Customs duties paid on steel mill products);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 29477, 5–23–2005); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board approves the request subject to the Act and the Board's regulations, including section 400.28, and the following special conditions:

Any foreign steel mill product admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to full Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

In addition to the annual report, Senesco shall annually advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable.

Signed at Washington, DC, this 21st day of December 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E5–8149 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1423]

Grant of Authority; Establishment of a Foreign-Trade Zone, Brattleboro, VT

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Brattleboro Foreign Trade Zone LLC, Vermont (the Grantee), has made application to the Board (FTZ Docket 7–2005, filed 01/31/05), requesting the establishment of a foreign-trade zone at sites in the Brattleboro, Vermont area, adjacent to the Springfield Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 6617, 02/08/05); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest, except for proposed Sites 3, 6, 9 and 12;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 268, at the sites described in the application, except for Sites 3, 6, 9 and 12, and subject to the Act and the Board's regulations, including Section 400.28, and further subject to a sunset provision that would terminate authority for any site not activated before December 31, 2010.

Foreign-Trade Zones Board.

Signed at Washington, DC, this 19th day of December 2005.

Carlos M. Gutierrez,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. E5–8147 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway: Final Results of the Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 29, 2005, the Department of Commerce (the ''Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway (''Salmon from Norway'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Fresh and Chilled Atlantic Salmon From Norway: Preliminary Results of the Full Sunset Review of Antidumping Duty Order*, 70 FR 51012 (August 29, 2005) (''*Preliminary Results*''). In those *Preliminary Results* we provided interested parties an opportunity to comment on our preliminary results. We received a case brief from the Norwegian Seafood Federation and the Norwegian Seafood Association (''respondents'') and a rebuttal brief from Heritage Salmon Company, Inc., and Atlantic Salmon of Maine (the ''domestic interested parties ''). A hearing, requested by respondents, was held on October 26, 2005 at the Department. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Malcolm Burke or Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–3584 or 202–482–4114, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called ''king'' or ''quinnat''), Coho (''silver''), Sockeye (''redfish'' or ''blueback''), Humpback (''pink'') and Chum (''dog''). Atlantic salmon is a whole or nearly–whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh–water ice (''chilled''). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the Tariff Schedules of the United States Annotated (''TSUSA''). Atlantic salmon is currently provided for under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 0302.12.0003 and 0302.12.0004. The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Background

On August 29, 2005, the Department published in the **Federal Register** a notice of the *Preliminary Results* of the full sunset review of the antidumping duty order on Salmon from Norway. In those *Preliminary Results* we determined that revocation of the order would likely result in continuation or recurrence of dumping at the margins reported in the ''Final Results of Review'' section of this notice. On October 18, 2005, respondents submitted a case brief in response to the Department's *Preliminary Results*, and on October 24, 2005, the domestic interested parties submitted a rebuttal brief. A hearing, requested by respondents on August 29, 2005, was held at the Department on October 26, 2005.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated December 28, 2005, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Commerce building. Additionally, a complete version of the Issues and Decision Memorandum can be accessed on the internet at *http://ia.ita.doc.gov*. The paper copy and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on salmon from Norway would be likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Manufacturer/Exporter	Margin (percent)
Salmonor A/S	18.39 percent
Sea Star International	24.61 percent
Skaarfish Mowi A/S	15.65 percent
Fremstad Group A/S	21.51 percent
Domstein and Co.	31.81 percent
Saga A/S	26.55 percent
Chr. Bjelland	19.96 percent
Hallvard Leroy A/S	31.81 percent
All Others	23.80 percent

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act. This notice serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary material disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Dated: December 22, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–8136 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils from Belgium: Notice of Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to requests from Allegheny Ludlum and United Steelworkers of America, AFL–CIO/CLC

(collectively, ''Petitioners'') and Ugine & ALZ Belgium, NV (Respondent), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on stainless steel plate in coils (SSPC) from Belgium. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 70 FR 37749 *(Initiation Notice).* This administrative review covered the period of May 1, 2004, through April 30, 2005. We are now rescinding this review as a result of both Petitioners' and Respondent's withdrawal of their requests for an administrative review.

EFFECTIVE DATE: December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Toni Page or Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone: (202) 482–1398 and (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on SSPC from Belgium on May 21, 1999. *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 67 FR 27756 (May 21, 1999). On May 2, 2005, the Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order for the period of May 1, 2004, through April 30, 2005. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspended Investigation,* 70 FR 22631 (May 2, 2005). Both Petitioners and Respondent requested that the Department conduct an administrative review of the antidumping duty order on SSPC from Belgium on May 31, 2005. In response to these requests, the Department initiated an antidumping duty administrative review on SSPC from Belgium on June 30, 2005. *See Initiation Notice,* 70 FR 37749.

On August 2, 2005, Petitioners withdrew their request for an administrative review. On August 27, 2005, Respondent requested, pursuant to section 351.213(d)(1) of the Department's regulations, an extension of the deadline to withdraw its request for an administrative review. On September 27, 2005, we extended the deadline to withdraw until no later than December 2, 2005. *See Letter from the Department to Ugine & ALZ Belgium* dated September 27, 2005. On December 2, 2005, Respondent submitted a letter withdrawing its request for an administrative review. These were the only requests for an administrative review of this order for the period May 1, 2004 through April 30, 2005.

Rescission of the Administrative Review

Pursuant to section 351.213(d)(1) of the Department's regulations, the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Section 351.213(d)(1) of the Department's regulations also states that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. The initiation notice for this review was published on June 30, 2005. We received Petitioners' withdrawal request on August 2, 2005, within the 90 days after publication of the initiation notice. We received Respondent's request for withdrawal on December 2, 2005, within the extended time period granted by the Department. Since all parties who requested this administrative review have withdrawn their requests in a timely manner, we are rescinding this review. The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice.

Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with Section 351.305(a)(3) of the Department's regulation. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with Section 777(i) of the Tariff Act of 1930, as amended, and Section 351.213(d)(4) of the Department's regulations.

Dated: December 23, 2005.

Stephen J. Clays,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–24673 Filed 12–29–05; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Extension of Scoping Period for the Notice of Intent to Prepare an Environmental Impact Statement for the Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory, Los Alamos, NM

SUMMARY: The National Nuclear Security Administration (NNSA), an agency within the U.S. Department of Energy (DOE), is extending the scoping period for the Environmental Impact Statement (EIS) on the Operation of a Biosafety Level 3 Facility at Los Alamos National Laboratory (LANL), Los Alamos, New Mexico.

DATES: The scoping period for the EIS is extended from December 29, 2005, to January 17, 2006. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments or suggestions concerning the scope of the Biosafety Level 3 Facility (BSL–3) EIS or requests for more information on the EIS and public scoping process may be directed to: Ms. Lisa Cummings, EIS Document Manager, U.S. Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations, 528 35th Street, Los Alamos, New Mexico 87544; facsimile at (505) 665–4873; or e-mail at *lcummings@doeal.gov*. A message may be left for Ms. Cummings at 1–866–506–2862.

FOR FURTHER INFORMATION CONTACT: For information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Subsequent to issuing an Environmental Assessment and Finding of No Significant Impact in February 2002, NNSA constructed a BSL–3 Facility at LANL. The BSL–3 Facility has never been operated. On November 29, 2005 (70 FR 71490), NNSA issued an NOI to prepare an EIS for the proposed operation of the BSL–3 Facility. As originally announced in the Notice of Intent, DOE has conducted public scoping meetings on the EIS in Los Alamos, Santa Fe, and Española. The original public scoping period was to continue until December 29, 2005. However, in response to public comments and to ensure that the public has ample opportunity to provide

comments, DOE is extending the public scoping period until January 17, 2006.

Issued in Washington, DC, on December 28, 2005.

Alice C. Williams,

NNSA NEPA Compliance Officer.

[FR Doc. 05–24689 Filed 12–29–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6670–8]

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 the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050328, ERP No. D–FHW–G40186–LA, U.S. 90 Corridor, Proposed Interstate Highway 49 (I49) South Improvement from Raceland to the Davis Pond Diversion Canal, Section of Independent Utility 1 (SIU 1), Lafourche and St. Charles Parishes, LA.

Summary: EPA does not object to the proposed project.

Rating LO.

EIS No. 20050359, ERP No. D–NPS–L61229–AK, Denali National Park and Preserve, Draft South Denali Implementation Plan, Matanuska-Susitna Borough, AK.

Summary: EPA does not object to the proposed action.

Rating LO.

EIS No. 20050385, ERP No. D–COE–D35061–VA, Craney Island Eastward Expansion, Construction of a 580-acre Eastward Expansion of the Existing Dredged Material Management Area, Port of Hampton Roads, Norfolk Harbor and Channels, VA.

Summary: EPA expressed environmental concerns over potential impacts to aquatic resources and environmental justice communities. EPA also requested additional information concerning air toxic, particulates, and wetland impacts.

Rating EC2.

EIS No. 20050453, ERP No. D–AFS–L65497–ID, South Fork Salmon River Sub-basin Noxious and Invasive Weed Management Program, Implementation, Krassel and McCall Ranger Districts, Payette National Forest and Cascade Ranger District, Valley and Idaho Counties, ID

Summary: EPA expressed environmental concerns about potential adverse impacts to water quality and fishery resources. Unintended impacts to non-target species, especially salmonids, and persistence in the soils should be addressed in the Final EIS. EPA encourages expanding the use of Integrated Pest Management.

Rating EC1.

Final EISs

EIS No. 20050478, ERP No. F1–FHW–H40397–MO, Interstate 70 Corridor Improvements, Section of Independent Utility #4, from Missouri Route BB Interchange to Eastern Columbia, Funding, Boone County, MO.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050329, ERP No. F–NPS–L65458–ID, Craters of the Moon National Monument and Preserve, Update and Consolidate Management Plans, into One Comprehensive Plan, Snake River Plain, Butte, Blaine, Lincoln, and Minidoka Counties, ID.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050409, ERP No. F–AFS–L64057–OR, Joseph Creek Rangeland Analysis Project, Proposal to Allocate Forage for Commercial Livestock Grazing on Eleven Allotment, Wallowa-Whitman National Forests, Wallowa Valley Ranger District, Wallowa County, OR.

Summary: EPA does not object to the proposed project.

EIS No. 20050456, ERP No. F–FHW–F40416–00, U.S. 24 Transportation Improvements Project, I–469 in New Haven, Indiana to Ohio Route 15 in Defiance, Funding, NPDES Permit and U.S. Army COE Section 404 Permit Issuance, Westenmost and Allen Counties, IN and Paulding and Defiance Counties, OH.

Summary: The Final EIS addressed EPA's concerns with wetland mitigation, noise mitigation, and storm water management. However, EPA continues to have concerns about post project monitoring and suggests details be included in the ROD.

EIS No. 20050475, ERP No. F–AFS–G65092–NM, Invasive Plant Control Project, Protection of the Abundance and Biological Diversity of Desired Native Plant, Carson National Forest and Santa Fe National Forest, Rio Arriba, Colfax, Los Alamos, Mora, San Miguel and Santa Fe Counties, NM.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050502, ERP No. F–AFS–J65424–MT, Fishtrap Project, Proposed Timber Harvest, Prescribed Burning, Road Construction and Other Restoration Activities, Lolo National Forest, Plains/Thompson Falls Ranger District, Sanders County, MT.

Summary: The Final EIS addressed EPA's concerns about sedimentation, road density, hydro logic processes, and impacts to wildlife habitat although there still may be some short-term water quality effects.

EIS No. 20050465, ERP No. FS–FHW–J40145–UT, Legacy Parkway Project, Construction from 1–215 at 2100 North in Salt Lake City to 1–15 and US–89 near Farmington, Updated Information, Funding and U.S. Army COE Section 404 Permit, Salt Lake and Davis Counties, UT.

Summary: EPA has no objections to the preferred alternative, and indicated the practicability determination for the Denver and Rio Grande alternatives was appropriate. EPA recommended that the details of 150 acres of land proposed for addition to the Legacy Nature Preserve be described in the Record of Decision.

EIS No. 20050476, ERP No. FS–AFS–L65344–AK, Emerald Bay Timber Sale, Implementation, Additional Information on the Potential Effects of the Project Alternatives, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK.

Summary: The Final EIS addressed EPA's concerns about the range of alternatives and Tribal consultation.

Dated: December 27, 2005.

Elaine Suriano,

Environmental Scientist, Office of Federal Activities.

[FR Doc. E5–8126 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6670–7]

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 12/19/2005 Through

12/23/2005, pursuant to 40 CFR 1506.9.

EIS No. 20050537, Final EIS, AFS, CA, Ansel Adams and John Muir Wildernesses, Trail and Commercial Pack Stock Management, Implementation, Inyo, Mono, Madera and Fresno Counties, CA, Wait Period Ends: 01/30/2006, Contact: Mary Beth Hennessy, 760–873–2448.

EIS No. 20050538, Draft EIS, AFS, CA, Horse Heli Project, Harvest Merchantable Timber, Thin Stands, Treat Fuels, and Conduct Associated Activities, Klamath National Forest, Oak Knoll Ranger District, Siskiyou County, CA. Comment Period Ends: 02/13/2006, Contact: Jan Ford 530–841–4501.

EIS No. 20050539, Draft EIS, GSA, CA, Andrade Port of Entry (POE) Improvements Project, Proposed Expansion, Renovation, or Replacement of POE, Andrade, CA, Comment Period Ends: 02/28/2006, Contact: Morris Angell, 415–522–3473.

EIS No. 20050540, Draft EIS, FAA, 00, New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign Project, To Increase the Efficiency and Reliability of the Airspace Structure and Air Traffic Control System, NY, NJ and PA, Comment Period Ends: 06/01/2006, Contact: Steve Kelly, 1–866–347–5463.

EIS No. 20050541, Draft EIS, COE, AR, Bayou Meto Basin, Arkansas General Reevaluation Project, Address Waterfowl Management, Water Supply and Flood Control Strategies, Located in Portions of Lonoke, Prairie, Jefferson, Arkansas and Pulaski, AR, Comment Period Ends: 02/24/2006, Contact: Mark Smith, 901–544–0670.

EIS No. 20050542, Final Supplement, AFS, WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Proposing to Amend the Umatilla National Forests Land and Resource Management Plan to Incorporate Management for Canada Lynx, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA, Wait Period Ends: 02/13/2006, Contact: Allen J. Ollila, 701–227–7735.

EIS No. 20050543, Draft EIS, NPS, VA, Manassas National Battlefield Park General Management Plan, Implementation, Fairfax and Prince William Counties, VA, Comment Period Ends: 02/28/2006, Contact: Patrick Gregerson, 202–619–7277.

EIS No. 20050544, Draft EIS, FHW, KY, Newtown Pike Extension Project, Road Connection from West Main Street to South Limestone Street in Lexington, Fayette County, KY, Comment Period Ends: 03/17/2006, Contact: Jose Sepulveda, 502–223–6720.

EIS No. 20050545, Draft EIS, FHW, CA, Doyle Drive Project, South Access to the Golden Gate Bridge, Propose to Improve Seismic, Structural, and Traffic Safety, Presidio of San Francisco, San Francisco County Transportation Authority, Marin and San Francisco Counties, CA, Comment Period Ends: 03/01/2006, Contact: Leland W. Dong, 916–498–5860.

EIS No. 20050546, Draft EIS, BLM, ID, Smoky Canyon Mine Panels F & G, Proposed Mine Expansion, Caribou County, ID, Comment Period Ends: 02/28/2006, Contact: Bill Stout, 208–478–6340.

EIS No. 20050547, Final EIS, AFS, ID, Paddy Flat Vegetation Project, Harvesting and Regenerate Timber Stands Precommercially Thin Plantations, Rapid, Kennally and Camp Creeks, Payette National Forest, McCall Ranger District, Valley County, ID, Wait Period Ends: 01/30/2006, Contact: Dan Anderson, 208–634–0435.

Amended Notices

EIS No. 20050401, Draft Supplement, SFW, CA, Southern Sea Otters (Enhydra lutris nereis) Translocation Program, New and Updated Information, San Nicolas Island, Southern California Bight, CA, Comment Period Ends: 03/06/2006, Contact: Greg Sander, 805–644–1766 Ext 315.

Revision of FR Notice Published on 10/07/2005: Comment Period Extended from 01/05/2006 to 03/06/2006.

EIS No. 20050446, Draft EIS, USN, 00, Undersea Warfare Training Range (USWTR), Installation and Operation, Preferred Site (in the Cherry Point Operating Area) and the Alternate Sites (within the Virginia Capes and Jacksonville Operating Areas), NC, VA and FL, Comment Period Ends: 01/30/2006, Contact: Keith Jenkins, 757–322–4046.

Revision of FR Notice Published on 10/28/2005: Comment Period Extended from 12/28/2005 to 1/30/2006.

EIS No. 20050518, Draft EIS, BLM, WY, Atlantic Rim Natural Gas Field Development Project, Proposed Natural Gas Development to 2000 Wells, 1800 to Coal Beds and 200 to Other Formations, Carbon County, WY, Comment Period Ends: 02/17/2006, Contact: David Simons, 307–328–4328.

Revision of FR Notice Published on 12/16/2005: Correction to Comment Period from 01/30/2006 to 02/17/2006.

EIS No. 20050534, Draft EIS, AFS, WA, The Summit at Snoqualmie Master Development Plan (MPD), Proposal to Ensure Long-Term Economic Viability, Mt. Baker-Snoqualmie/Okanogan-Wnatchee National Forests, King County, WA, Comment Period Ends: 02/06/2006, Contact: Larry Donovan, 425–744–3403.

Revision of FR Notice Published on 12/23/2005: Correction to Contact Person Telephone Number.

Dated: December 27, 2005.

Elaine Suriano,

Environmental Scientist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E5–8127 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. FRL–8017–8]

Meeting of the Ozone Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2006 Special Meeting of the Ozone Transport Commission (OTC). This OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context.

DATES: The meeting will be held on February 21, 2006 starting at 1 p.m. and February 22, 2006 at 9 a.m.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100. For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: *ozone@otcair.org*; Web site: *http://www.otcair.org*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ''Ozone Transport Region'' (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New

Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport commission is to deal with ground-level ozone formation, transport, and control within the OTR. The purpose of this notice is to announce that the OTC will meet on February 21–22, 2006 at the address noted earlier in this notice. This meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context. Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meeting of the Ozone Transport Commission is not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840 by e-mail: *ozone@otcair.org* or via the OTC Web site at *http://www.otcair.org*.

Dated: December 19, 2005.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. E5–8124 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0231; FRL–7754–7]

Metaldehyde Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide metaldehyde, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for metaldehyde through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 28, 2006.

ADDRESSES: Comments identified by docket identification (ID) number EPA–HQ–OPP–2005–0231, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–8041; e-mail address: *bloom.jill@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0231. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or

delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0231. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0231. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number EPA–HQ–OPP–2005–0231.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA–HQ–OPP–2005–0231. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for metaldehyde, a pesticide, and soliciting public comment on risk management ideas or proposals. Metaldehyde is a molluscicide used to control slugs and snails on a variety of tree, fruit, and vegetable crops in agricultural, horticultural, or residential settings. It is also used on residential turf. Approximately 90% of metaldehyde usage is in the Pacific Northwest. EPA developed the risk assessments and risk characterization for metaldehyde through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that

pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for metaldehyde. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information, or measures to reduce exposure, such as reduction in application rates, reduction in number of applications, etc., or comments on the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for metaldehyde. Risks of concern associated with the use of metaldehyde include ecological effects and contamination of groundwater; incident data additionally suggest concern for domestic animals inadvertently exposed to metaldehyde products. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to metaldehyde, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FR–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For metaldehyde, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its limited and geographically restricted use and limited risks. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for metaldehyde. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 21, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E5–8041 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0524; FRL–7755–1]

Erioglaucine and Tartrazine Aquashade; Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide Aquashade, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the Aquashade docket. The dyes erioglaucine (Acid Blue 9 or FD&C Blue No. 1) and tartrazine (Acid Yellow 23 or FD&C Yellow No. 5), when combined, act as an aquatic algaecide/herbicide, commonly referred to by the trade name Aquashade. It can be used in natural or manmade ponds, lakes, fountains, fish farms, and fish hatcheries, and may be applied by both professional applicators and homeowners. EPA has reviewed Aquashade through a streamlined public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 28, 2006.

ADDRESSES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0524, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kendra Tyler, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0125; fax number: (703) 308–8041; e-mail address: *tyler.kendra@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0524. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0524. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0524. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: DocketID Number EPA–HQ–OPP–2005–0524.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall # 2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA–HQ–OPP–2005–0524. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, Aquashade under section 4(g)(2)(A) of FIFRA. The dyes erioglaucine (Acid Blue 9 or FD&C Blue No. 1) and tartrazine (Acid Yellow 23 or FD&C Yellow No. 5), when combined, act as an aquatic algaecide/herbicide, commonly referred to by the trade name Aquashade. The mixture of erioglaucine and tartrazine control the wave length range of the sunlight spectrum required for photosynthesis, thereby inhibiting growth of filamentous algae and submerged aquatic vegetation. It can be used in natural or manmade ponds, lakes, fountains, fish farms, and fish hatcheries, and may be applied by both professional applicators and homeowners. EPA has determined that the database to support reregistration is substantially complete and that products containing Aquashade are eligible for reregistration. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (to address concerns identified as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing Aquashade.

EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted in August 1996 to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the Aquashade tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9); explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, Aquashade was reviewed through the modified 1–phase process.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the Aquashade RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for Aquashade. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the Aquashade RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA.

This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 21, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E5–8033 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0478; FRL–7742–8]

Ferbam Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide ferbam, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the Ferbam Docket. Ferbam is registered for use as a fungicide on citrus, pome and stone fruits, cranberries, and tobacco. EPA has reviewed ferbam through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–9542; fax number: (703) 308–8041; e-mail address: *johnson.amaris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0337. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0337. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0337. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0337.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0337. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, ferbam under section 4(g)(2)(A) of FIFRA. Ferbam is registered for use as a fungicide on citrus, pome and stone fruits, cranberries, and tobacco. EPA has determined that the data base to support reregistration is substantially complete and that products containing ferbam are eligible for reregistration. Upon submission of any required product-specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing ferbam.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the ferbam tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of

risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its limited use pattern and low risks of concern, ferbam was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ferbam.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the ferbam RED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. For ecological and worker protection, the Agency is prohibiting aerial applications, requiring decreased rates and added personal protective equipment for some uses. Comments on the feasibility of these mitigation measures and/or benefits of ferbam use are requested. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for ferbam. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the ferbam RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

December 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E5–8034 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0308– FRL–7755–4]

Notice of Filing of Pesticide Petitions for the Establishment of Regulations for Residues of the Fungicide Metiram in or on Food Commodities; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of November 30, 2005, concerning the initial filing of a pesticide petition proposing the establishment of regulations for residues of metiram: a mixture of 5.2 parts by weight of ammoniates of ethylenebis(dithiocarbamato) zinc with 1 part by weight ethylenebis (dithiocarbamic acid) bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebisdithiocarbamate in or on imported grapes and bananas with a 30-day public comment period. This document is extending the comment period for 20 days, from December 30, 2005 to January 19, 2006.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0308 must be received on or before January 19, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 30, 2005 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–-0001; telephone number: (703) 308-9424; e-mail address: *jones.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0308. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the

detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 30, 2005 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of November 30, 2005 (70 FR 71836) (FRL–7747–5). In that document, Notice of Filing of Pesticide Petitions for the Establishment of Regulations for Residues of the Fungicide Metiram in or on Food Commodities, the comment period was set to end on December 30, 2005, EPA is hereby extending it to January 19, 2006.

III. What is the Agency's Authority for Taking this Action?

In accordance with section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act, the Administrator shall publish a notice of filing of a petition.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 22, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E5–8035 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0307; FRL–7755–3]

Notice of Filing of Pesticide Petitions for the Establishment of Regulations for Residues of the Fungicide Mancozeb in or on Food Commodities; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of November 30, 2005, concerning the initial filing of a pesticide petition proposing the establishment of regulations for residues of mancozeb in or on almond nuts and hulls; broccoli, cabbage, lettuce and peppers; and imported oranges/mandarins with a 30-day public comment period. This document is extending the comment period for 20 days, from December 30, 2005 to January 19, 2006.

DATES: Comments, identified by docket identification (ID) number EPA– HQ–OPP–2005–0307 must be received on or before January 19, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 30, 2005 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9424; e-mail address:*jones.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA-HQ–OPP—2005–0307. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305—5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the November 30, 2005 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of November 30, 2005 (70 FR 71836) (FRL–7747–5). In that document, Notice of Filing of Pesticide Petitions for the Establishment of Regulations for Residues of the Fungicide Mancozeb in or on Food Commodities, the comment period was set to end on December 30, 2005, EPA is hereby extending it to January 19, 2006.

III. What is the Agency's Authority for Taking this Action?

In accordance with section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act, the Administrator shall publish a notice of filing of a petition.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 22, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs

[FR Doc. E5–8040 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8017–5]

Proposed Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h)(1), P.M. Northwest Site, Swinomish Indian Reservation, Laconnor, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act (''CERCLA''), notice is hereby given of a proposed settlement to resolve claims against P.M. Northwest Inc., Shell Oil Company, and Texaco Inc. The proposed settlement concerns the federal government's past response costs at the PM Northwest Site, located on the Swinomish Indian Reservation, near Laconnor, Washington. The settlement requires the settling parties, PM Northwest Inc., Shell Oil Company, and Texaco Inc., to pay $170,000 to the Hazardous Substance Superfund.

DATES: Comments must be received by January 30, 2006, relating to the settlement.

ADDRESSES: The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region 10 office at 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Carol Kennedy, Regional Hearing Clerk, EPA, Region 10, 1200 Sixth Avenue (ORC–158), Seattle, Washington 98101, telephone number (206) 553–0242. Comments should reference the ''PM Northwest Site'' and EPA Docket No. CERCLA–10–2004–0216 and should be addressed to Ms. Kennedy at the above address.

FOR FURTHER INFORMATION CONTACT: Richard McAllister, Assistant Regional Counsel, EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington 98101, telephone number (206) 553–8203.

Dated: December 22, 2005.

L. Michael Bogert,

Regional Administrator, Region 10.

[FR Doc. E5–8123 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0552; FRL–7753–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 17, 2005 to December 7, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments, identified by the docket ID number EPA–HQ–OPPT–2005–0552 and the specific PMN number or TME number, must be received on or before January 30, 2006.

ADDRESSES: Comments/may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0552. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005 by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other

information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPPT–2005–0552. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number EPA–HQ–OPPT–2005–0552 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0552 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 17, 2005 to December 7, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 36 PREMANUFACTURE NOTICES RECEIVED FROM: 11/17/05 TO 12/07/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0137	11/18/05	02/15/06	CBI	(G) Adhesive	(G) Acrylic polymer
P–06–0138	11/18/05	02/15/06	CBI	(G) Adhesive	(G) Acrylic polymer
P–06–0139	11/18/05	02/15/06	CBI	(G) Adhesive	(G) Acrylic polymer
P–06–0140	11/18/05	02/15/06	CBI	(G) Adhesive	(G) Acrylic polymer
P–06–0141	11/18/05	02/15/06	CBI	(G) Open non-dispersive (coatings)	(G) Polyurethane resin
P–06–0142	11/18/05	02/15/06	CBI	(G) Open non-dispersive (coatings)	(G) Polyurethane resin
P–06–0143	11/18/05	02/15/06	Hi-tech color Inc.	(G) Polyurethane resin for coating agent	(G) Aliphatic polyurethane
P–06–0144	11/18/05	02/15/06	CBI	(G) Open non-dispersive (resin)	(G) Polyester polyurethane modified mdi
P–06–0145	11/21/05	02/18/06	CBI	(G) Polymerization additive	(G) Polyoxyethylene polyoxyalkylene monoalkenyl ether
P–06–0146	11/23/05	02/20/06	CBI	(S) Resin for semiconductor encapsulation or resin for laminated sheets used in electronic materials / electric apparatus	(G) Phenol, polymer with substituted benzenre, glycidyl ether
P–06–0147	11/23/05	02/20/06	CBI	(G) Component of fragrances for functional household products e.g. cleaning agents, air fresheners and candles.	(G) Cycloalkenyl ethanone
P–06–0148	11/29/05	02/26/06	Phoenix Chemical Inc.	(G) beade up agent for car wash (industrial)	(S) Amides, c18-unsaturated, dimers, hydrogenated, *n,n*′-bis [3-(dimethylamino)propyl]
P–06–0149	11/22/05	02/19/06	Itochu Chemicals America, Inc.	(G) Physical characteristics modifier for industrial use in certain solid composite articles	(S) Potassium titanium oxide
P–06–0150	11/29/05	02/26/06	CBI	(G) Contained use in crude oil production.	(G) Ethenylbenzene - acrylate ester polymer
P–06–0151	11/30/05	02/27/06	CBI	(S) Additive in rubber, i.e. as reinforcing agent	(G) Quadruplicate copolymer from 1,3-butadiene and ethenylbenzene and trimethylolpropane trimethacrylate and 2-propenoic acid, 2-methyl; 2-hydroxyethyl ester.
P–06–0152	11/30/05	02/27/06	CBI	(G) Spacer in electronic parts	(S) 2-propenoic acid, 2,2-bis[[(1-oxo-2-propenyl)oxy]methyl]-1,3-propanediyl ester, polymer with diethenylbenzene and ethenylethylbenzene

I. 36 PREMANUFACTURE NOTICES RECEIVED FROM: 11/17/05 TO 12/07/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–06–0153	12/01/05	02/28/06	CBI	(G) Reactant	(G) Iso-tridecanol
P–06–0154	12/01/05	02/28/06	Hi-Tech Color Inc.	(G) Heat-resistant and slide of thermal-transfer sheet (back coating agent)	(G) Silicone-polyol
P–06–0155	12/01/05	02/28/06	CBI	(S) Ultra violet electron beam curable resin for ultra violet/electron beam curable applications (e.g. adhesives, coatings, inks)	(G) Aromatic tetracarbonyl compound polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl cyclohexane, 2-hydroxyethyl acrylate- and 2-oxepanone homopolymer 2-[(1-oxo-2-propenyl)oxy]ethyl ester-blocked
P–06–0156	12/02/05	03/01/06	Degussa Corporation	(S) Reactive hot melt in the autmotive industry; reactive hot melt in the building sector; reactive hot melt in the plastic manufacturing	(S) Silane, ethenyltrimethoxy-, reaction products with 1-butene-ethylene-propene polymer
P–06–0157	12/01/05	02/28/06	Chryso, Inc.	(S) Grinding aid for portland cement, limestone and other minerals	(G) Organic acid salt of an alkylalkanolamine
P–06–0158	12/01/05	02/28/06	Chryso, Inc.	(S) Grinding aid for portland cement, limestone and other minerals	(G) Organic acid salt of an alkylalkanolamine
P–06–0159	12/01/05	02/28/06	Chryso, Inc.	(S) Grinding aid for portland cement, limestone and other minerals	(G) Organic acid salt of an alkylalkanolamine ethoxylate
P–06–0160	12/01/05	02/28/06	Chryso, Inc.	(S) Grinding aid for portland cement, limestone and other minerals	(G) Organic acid salt of an ethoxylated alkanolamine
P–06–0161	12/01/05	02/28/06	Chryso, Inc.	(S) Grinding aid for portland cement, limestone and other minerals	(G) Organic acid salt of an alkanolamine
P–06–0162	12/05/05	03/04/06	CBI	(G) Hot melt adhesive	(G) Isocyanate functional urethane prepolymer
P–06–0163	12/05/05	03/04/06	Biolandes, inc	(S) In fragrance compositions in cosmestics, air fresheners, household cleaners, diswashing and laundry	(S) Extractives and their physically modified derivatives. Oils, ginger, zingber purpurem
P–06–0164	12/05/05	03/04/06	CBI	(G) Intermediate used in electronics	(G) Halogenated aromatic anhydride copolymer
P–06–0165	12/05/05	03/04/06	CBI	(G) Binder used in electronics manufacture	(G) Halogenated aromatic anhydride copolymer
P–06–0166	12/05/05	03/04/06	CBI	(S) Chemical intermediate	(S) 3h-1,2,4-triazol-3-one, 1,2-dihydro-
P–06–0167	12/05/05	03/04/06	CBI	(G) Chemical process intemediate (a destructive use)	(G) Substituted benzoic acid ester
P–06–0168	12/07/05	03/06/06	CBI	(G) Additve, open, non-dispersive use	(G) Copolymer of alkylacrylate and modified methylacrylate
P–06–0169	12/07/05	03/06/06	Dexter Chemical LLC	(G) Surfactant and corrosion inhibiting additive for waterborne coatings	(S) Phosphoric acid, isooctyl ester, ammonium salt
P–06–0170	12/07/05	03/06/06	CBI	(G) Additive, open, non-dispersive use	(G) Dicarboxylic acid ester, polymer with styrene, maleicanhydride and methyacrylate, compound with amine
P–06–0171	12/07/05	03/06/06	CBI	(G) Additive, open, non-dispersive use	(G) Styrene-maleic acid copolymer, amine salt
P–06–0176	12/06/05	03/05/06	CBI	(G) Acrylate ester	(G) Chemical intemediate, inks

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 20 NOTICES OF COMMENCEMENT FROM: 11/17/05 TO 12/07/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–01–0814	11/23/05	11/02/05	(G) Polyacrylic resin, based on hydroxyethyl methacrylate
P–02–0536	11/23/05	11/14/05	(G) Cyclic diol
P–02–0743	12/01/05	11/10/05	(G) Modified polyolefin
P–04–0542	11/21/05	10/26/05	(G) Formaldehyde polymers with phenol, long chain alkyl phenol and resorcinol
P–04–0620	12/07/05	11/16/05	(S) Fatty acids, C_{18}-unsaturated., dimers, polymers with C_{36}-alkylenediamines, ethylenediamine, polypropylene glycol diamine and sebacic acid
P–04–0784	11/21/05	11/10/05	(G) 4,4′ mdi based polyurethane polymer

II. 20 NOTICES OF COMMENCEMENT FROM: 11/17/05 TO 12/07/05—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0808	11/25/05	11/17/05	(G) Aromatic thermoplastic polyurethane
P–05–0002	11/28/05	11/16/05	(G) Methyl cyano amino ethyl ether
P–05–0010	11/28/05	11/20/05	(G) Trimethyl bis alkylamine bis (aminoethyl) ether
P–05–0119	11/30/05	10/05/05	(G) Allylpolyalkylenglycolsulfate, ammonium salt
P–05–0152	11/23/05	11/14/05	(G) Polydimethyl alkyl methyl siloxane
P–05–0366	11/25/05	11/09/05	(G) Substituted phenylsulfonyl, substituted acid chloride
P–05–0405	11/25/05	11/12/05	(G) Substituted phenylsulfonyl, halosubstituted benzamide
P–05–0432	11/22/05	07/01/05	(G) Alkanedioic acid, polymer with amine, alkanediols, caprolactone, dialkyl ester of sulfated aromatic dicarboxylic acid, sodium salt, hydroxy substituted alkane, isocyanates and alkanetriol.
P–05–0449	11/18/05	10/18/05	(G) Epoxidized soya oil reaction products with alcohol
P–05–0509	11/21/05	11/09/05	(G) Isocyanate functional urethane polymer
P–05–0555	11/30/05	11/16/05	(S) Dodecanedioic acid, dihydrazide
P–05–0601	11/30/05	11/07/05	(G) Ethoxylated bis (hydroxysubstituted) alkane
P–05–0671	11/22/05	11/16/05	(G) Alkyl imide condensate of chloro triaryl diamine dione
P–05–0672	11/21/05	10/28/05	(S) Cyclohexadecanone, .beta.(or 9)-methyl-, didehydro derivative
P–05–0696	12/06/05	11/15/05	(G) Polyether polyurethane derivative polymer
P–05–0702	11/21/05	11/08/05	(G) Sulphonated azo dye

List of Subjects

Environmental Protection, Chemicals, Premanufacturer Notices.

Dated: December 22, 2005.

Carolyn Thornton,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E5–8032 Filed 12–29–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Tonganoxie Bankshares, Inc., Tonganoxie, Kansas; to acquire 53 percent of the voting shares of Overbrook Bankshares, Inc., and thereby indirectly acquire First Security Bank, both of Overbrook, Kansas.

Board of Governors of the Federal Reserve System, December 27, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–8106 Filed 12–29–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EST), January 4, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

- Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 27, 2006.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 05–24674 Filed 12–27–05; 4:05 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Assistant Secretary for Planning & Evaluation Medicaid Program; Meeting of the Medicaid Commission—January 24–26, 2006

AGENCY: Assistant Secretary for Planning & Evaluation (ASPE), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medicaid Commission. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Medicaid Commission will advise the Secretary on ways to modernize the Medicaid program so that it can provide high-quality health care to its beneficiaries in a financially sustainable way.

DATES: *The Meeting:* January 24–26, 2006. The meeting will begin at 6 p.m. on January 24, and will begin at 9 a.m. each day on January 25 and 26.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Medicaid

Commission by January 13, 2006 (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: *The Meeting:* The meeting will be held at the following address: Holiday Inn Washington-Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815, United States, telephone: 1 (301) 656–1500, fax: 1 (301) 656–5045.

Web site: You may access up-to-date information on this meeting at *http://www.cms.hhs.gov/FACA/10_mc.asp#TopOfPage*.

FOR FURTHER INFORMATION CONTACT: Margaret Reiser, (202) 205–8255.

SUPPLEMENTARY INFORMATION: On May 24, 2005, we published a notice (70 FR 29765) announcing the Medicaid Commission and requesting nominations for individuals to serve on the Medicaid Commission. This notice announces a public meeting of the Medicaid Commission.

Topics of the Meeting

The Commission will discuss options for making longer-term recommendations on the future of the Medicaid program that ensure long-term sustainability. Issues to be addressed may include, but are not limited to: eligibility, benefit design, and delivery; expanding the number of people covered with quality care while recognizing budget constraints; long term care; quality of care, choice, and beneficiary satisfaction; and program administration.

Procedure and Agenda

This meeting is open to the public. There will be a public comment period at the meeting. The Commission may limit the number and duration of oral presentations to the time available. We will request that you declare at the meeting whether or not you have any financial involvement related to any services being discussed.

After the presentations and public comment period, the Commission will deliberate openly. Interested persons may observe the deliberations, but the Commission will not hear further comments during this time except at the request of the Chairperson. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

Dated: December 20, 2005.

Donald A.Young,

Acting Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

[FR Doc. E5–8097 Filed 12–29–05; 8:45 am]

BILLING CODE 5150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05AD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Helping to End Lead Poisoning (HELP): A Questionnaire Study of Medicaid Providers' Self-Reported Attitudes, Practices, Beliefs, and Barriers to Childhood Blood Lead Testing—New—National Center for Environmental Health, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

According to the United States Department of Health and Human Services (DHHS), lead poisoning is one of the most serious environmental threats to children in the United States. Very high blood lead levels in children can cause encephalopathy, coma, and even death. At lower levels, lead poisoning is a silent attacker because most children who are lead poisoned do not show symptoms. Low levels of lead poisoning are often associated with reductions in IQ and attention span, and with learning disabilities, hyperactivity, and behavioral problems. Because of these subtle effects, the best way to determine if a child has lead poisoning is by giving the child a blood lead test.

Children eligible for Medicaid are typically at highest risk for lead exposure. DHHS policies require blood lead testing for all children participating in Federal health care programs. However, most children in or targeted by Federal health care programs have not been tested.

Although blood lead testing is important, it is ineffective unless it is performed when the child is young enough to receive the full benefits of effective environmental interventions. Thus, it was determined by the CDC Lead Poisoning Prevention Branch (LPPB) that more information is needed to understand the barriers Medicaid providers face when it comes to blood lead testing.

Helping To End Lead Poisoning (HELP) is a comparison study between two communities in Wisconsin. To determine why some areas in Wisconsin have high blood lead testing rates and others do not, Medicaid providers in two areas will be studied. Community 1 has high and Community 2 has low blood lead testing rates. Questionnaires will be mailed to all Medicaid providers in these two Wisconsin communities. The questionnaires will be sent from and returned to the CDC LPPB in Atlanta, Georgia. CDC will analyze the data from the questionnaires. CDC and the Wisconsin Childhood Lead Poisoning Prevention Program staff will use this information to understand the barriers Medicaid providers face concerning blood lead testing and to develop effective strategies that promote blood lead testing among Medicaid providers. There is no cost to respondents, other than their time.

National Center for Environment Health (NCEH), is requesting a year to complete the study. The total estimated burden hours are 14.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Targeted Medicaid Providers in Wisconsin (mailed questionnaire)	13	1	10/60
Targeted Medicaid Providers in Wisconsin (telephone follow-up): "Yes"	60	1	10/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Targeted Medicaid Providers in Wisconsin (telephone follow-up): "No" or mailed.	49	1	2/60

Dated: December 23, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–8098 Filed 12–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–05AZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

NCEH/ATSDR Exposure Investigations (EIs)—New—National Center for Environmental Health (NCEH) and the Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a brief summary of a joint clearance between the NCEH and ATSDR, (hereafter ATSDR will represent both ATSDR and NCEH). ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Reauthorization Act (SARA) to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances in the environment. Exposure Investigations (EIs) is an approach developed by ATSDR that employs targeted biologic (*e.g.*, urine, blood, hair samples) and environmental (*e.g.*, air, water, soil, or food) sampling to determine whether people are or have been exposed to unusual levels of pollutants at specific locations (*e.g.*, where people live, spend leisure time, or anywhere they might come into contact with contaminants under investigation). After a chemical release or suspected release into the environment, ATSDR's EIs are used by public health professionals, environmental risk managers, and other decision makers to determine if current conditions warrant intervention strategies to minimize or eliminate human exposure. EIs are usually requested by officials of a state health agency, county health departments, the Environmental Protection Agency, the general public, and ATSDR staff.

All of ATSDR's biomedical assessments and some of the environmental investigations involve participants. Participation is completely voluntary. To assist in interpreting the sampling results, a survey questionnaire appropriate to the specific contaminant will be administered to participants. ATSDR collects contact information (*e.g.*, name, address, phone number) to provide the participant with their individual results. Name and address information are broken into nine separate questions (data fields) for computer entry. General information, which includes height, weight, age, race, gender, etc., is needed primarily on biomedical investigations to assist with results interpretation. General information can account for approximately 28 questions per investigation. Some of this information is investigation-specific; not all of this data is collected for every investigation. ATSDR is seeking approval for a set of 57 potential general information questions.

ATSDR also collects information on other possible confounding sources of chemical(s) exposure such as medicines taken, foods eaten, etc. In addition, ATSDR asks questions on recreational or occupational activities that could increase exposure potential. This information represents an individual's exposure history. To cover these broad categories, ATSDR is also seeking approval for the use of sets of topical questions. Of these, ATSDR will use approximately 12–15 questions about the pertinent environmental exposures per investigation. This number can vary depending on the number of chemicals being investigated, the route of exposure (breathing, eating, touching), and number of other sources (*e.g.*, products, jobs) for the chemical(s).

Typically, the number of participants in an individual EI ranges from 10 to less than 50. Questionnaires are generally needed in less than half of the EIs (approximately 10–15 per year).

Areas for the complete set of topical questions include the following:

(1) Media specific which includes: air (indoor/outdoor); water (water source and plumbing); soil, and food (gardening, fish, game, domestic animals).

(2) Other sources such as: occupation; hobbies; household uses or house construction; lifestyle (*e.g.*, smoking); medicines and/or health conditions, and foods.

There are no costs to the respondents other than their time. The estimated total burden hours are 375.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents per response	No. of respondents	Responses per respondent	Average burden
Exposure Investigation Participants	750	1	30/60

Dated: December 23, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–8102 Filed 12–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Notice

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Disease (NCID), Division of Bacterial and Mycotic Diseases (DBMD) and the National Immunization Program, Epidemiology and Surveillance Division through its component Branches have lead technical responsibility for research, development and evaluation of diagnostic tools for pertussis and application of these to epidemiologic studies of pertussis. CDC uses epidemiologic, laboratory, clinical, and biostatistical sciences to control and prevent vaccine preventable infectious diseases. CDC also conducts applied research in a variety of settings, and translates the findings of this research into public health practice.

CDC is seeking to evaluate commercial products, or products in development, for in vitro serological diagnosis of pertussis. Specifically these should include tests to detect anti-pertussis toxin antibodies in infected and vaccinated individuals. The tests should be based on standardized reagents commonly used in the field (such as FDA Reference Serum Standard Lot #3 or equivalents). Products will be evaluated in CDC and collaborating laboratories and if appropriate, may be used in epidemiologic validation studies. Data obtained from this comparative analysis may be used by CDC in making recommendations and decisions for diagnosis of pertussis in the public health setting.

Interested organizations that may have candidate products are invited to submit documentation for CDC to assess whether the offered product(s) are at a sufficient stage of development to be included in this comparative analysis. As a minimum, submitted information should be sufficient for CDC to determine the following for each candidate product: (a) Product package insert or detailed instructions for use; (b) Detailed information to determine if the product is calibrated to a recognized standard; and (c) Preliminary data demonstrating suitability for validation studies.

Organizations that have products selected by CDC for this comparative analysis will be required to enter into an appropriate agreement prior to the transfer of any material to CDC. Sample agreements may be viewed at the following Web site: *http://www.cdc.gov/od/ads/techtran/forms.htm.* All information submitted to CDC will be kept confidential as allowed by relevant federal law, including the Freedom of Information Act (5 U.S.C. 552) and the Trade Secrets Act (18 U.S.C. 1905). Only information submitted within thirty days of publication of this notice will be reviewed to determine if the offered product(s) will be acceptable for possible inclusion in this comparative analysis.

Responses are preferred in electronic format and can be e-mailed to the attention of Michael J. Detmer at *MDetmer@cdc.gov.* Mailed responses can be sent to the following address: Michael J. Detmer, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Rd., NE., Mail Stop C–09, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: *Technical:* Dr. Patty Wilkins, Division of Bacterial and Mycotic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mail Stop D–11, Atlanta, GA 30333. Telephone (404) 639–3297, E-Mail at *pwilkins@cdc.gov.*

Business: Lisa Blake-DiSpigna, Technology Development Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE., Mail Stop A–42, Atlanta, GA 30333. Telephone (404) 639–2620, E-Mail at *LBlake-DiSpigna@cdc.gov.*

Dated: December 21, 2005.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. E5–8103 Filed 12–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), The Centers for Disease Control and Prevention, NCEH/ATSDR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Times and Dates: 12:30 p.m.–2 p.m., January 23, 2006.

Place: The teleconference will originate at the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the BSC, NCEH/ATSDR the PPRS will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

Matters to be Discussed: Discussion of the peer review of the Air Pollution and Respiratory Branch; discussion of the planning for the Division of Toxicology and Environmental Medicine peer review; and a discussion of the peer review process.

Agenda Items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 12:30 p.m. EST. To participate please dial (877) 315–6535 and enter conference code 383520. Public comment period is scheduled for 1:45–1:55 p.m.

FOR FURTHER INFORMATION CONTACT: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0003.

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 National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Dated: December 23, 2005.

Elaine Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–24639 Filed 12–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Working Group of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Audio Conference Call Time and Date: 10 a.m.–4 p.m., EST, Monday, January 9, 2006.

Place: Audio conference call via FTS conferencing. The USA toll-free dial-in number is 1–888–390–6586, pass code 41964.

Status: Open to the public, but without a public comment period.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary, Department of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for the purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001 and renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: The Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for the conference call includes reviews of the Bethlehem Steel Site Profile, Y–12 Site Profile, a report from the working group regarding discussions concerning the Board's review of SEC petitions, and science issues.

The agenda is subject to change as priorities dictate.

In the event a member cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

For Further Information Contact: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 22, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–24640 Filed 12–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting and Opening of the Public Comment Period

Name: The Draft Document: NIOSH Current Intelligence

Bulletin: Evaluation of Health Hazard and Recommendations for Occupational Exposure to Titanium Dioxide.

Meeting Date and Time: February 27, 2006, 9 a.m.–4 p.m.

Place: Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To explain and discuss the scientific basis for the draft document, ''NIOSH Current Intelligence Bulletin: Evaluation of Health Hazard and Recommendations for Occupational Exposure to Titanium Dioxide,'' current research on titanium dioxide, and information on occupational exposure to titanium dioxide. Special emphasis will be placed on discussion of the following:

(1) What animal and human data best describe the health concerns from exposure to titanium dioxide; (2) What strategies are being used to control occupational exposure to titanium dioxide (*e.g.*, engineering controls, work practices, personal protective equipment); (3) In which workplaces and occupations can exposure to titanium dioxide occur; (4) What challenges exist in measuring workplace exposures to titanium dioxide; (5) What are areas for future collaborative efforts (*e.g.*, research, communication, development of exposure measurement and control strategies)?

The public is invited to attend and will have the opportunity to provide comments.

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to titanium dioxide (including particle size-specific information). Examples of requested information include, but are not to be limited to, the following: (1) Identification of industries or occupations in which exposures to titanium dioxide may occur; (2) Trends in the production and use of titanium dioxide; (3) Description of work tasks and scenarios with a potential for exposure to titanium dioxide; (4) Current and historical exposure measurement data in various types of industries and jobs; (5) Case reports or other health information demonstrating health effects in workers exposed to titanium dioxide; (6) Reports of experimental in vivo and in vitro studies that provide evidence of a dose-relationship between the particle size of a substance and its biological activity; (7) Reports of experimental inhalation studies with rodents demonstrating a relationship between the particle size or surface area of a substance and lung inflammation, fibrosis, and biochemical mediators; (8) Description of work practices and engineering controls used to reduce or prevent workplace exposure to titanium dioxide. (9)

Educational materials for worker safety and training on the safe handling of titanium dioxide; (10) Data pertaining to the feasibility of establishing particle size-specific RELs for titanium dioxide.

NIOSH will use this information to assess the scientific basis for the draft worker health recommendations contained in the draft Current Intelligence Bulletin and determine the need for revision to those draft recommendations for reducing occupational exposure to titanium dioxide.

Status: The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available. The meeting room accommodates 80 people. Due to limited space, notification of intent to attend the meeting must be made to Diane Miller no later than February 14, 2006. Ms. Miller can be reached by telephone at 513/533–8450 or by e-mail at *niocindocket@cdc.gov.* Requests to attend the meeting will be accommodated on a first-come basis.

Non-U.S. Citizens: Because of CDC Security Regulations, any non-U.S. citizen wishing to attend this meeting must provide the following information in writing to Diane Miller at the address below no later than February 14, 2006: (1) Visitor's full name; (2) Gender; (3) Date of Birth; (4) Place of birth (city, province, state, country); (5) Citizenship; (6) Passport number; (7) Date of passport issue; (8) Date of passport expiration; (9) Type of Visa; (10) Visitor's organization; (11) Organization address; (12) Organization telephone number; (13) Visitor's position/title within the organization.

This information will be transmitted to the CDC Security Office for approval. Visitors will be notified as soon as approval has been obtained.

A copy of the draft Current Intelligence Bulletin *Evaluation of Health Hazard and Recommendations for Occupational Exposure to Titanium Dioxide* can be obtained from the Internet at *http://www.cdc.gov/niosh/docs/preprint/tio2* or a hard copy may be requested from the Docket Officer, Diane Miller (contact information below).

Addresses: Comments should be submitted to the NIOSH Docket Office, ATTN: Diane Miller, Robert A. Taft Laboratories, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226, telephone 513/533–8450, fax 513/533–8285.

Comments may also be submitted directly through the Web site (*http://www.cdc.gov/niosh/docs/preprint/tio2*) or by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted in Microsoft Word. Comments should be submitted to NIOSH no later than March 31, 2006, and should reference docket number NIOSH–033 in the subject heading.

Oral comments made at the public meeting must also be submitted to the docket in writing in order to be considered by the Agency.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Persons For Technical Information: Christine Sofge 513/533–8439 or Faye Rice 513/533–8335, M/S C–15, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 22, 2005.

Diane Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E5–8100 Filed 12–29–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10157, CMS–10172, CMS–R–0107 and CMS–R–285]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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:* CMS Real-time Eligibility Agreement and Access Request; *Form Number:* CMS–10157 (OMB#: 0938–0960); *Use:* Federal law requires that CMS take precautions to minimize the security risk to Federal information systems. Accordingly, CMS is requiring that trading partners who wish to conduct the eligibility transaction on a real-time basis to access Medicare beneficiary information provide certain assurances as a condition of receiving access to the Medicare database for the purpose of conducting eligibility verification. Health care providers, clearinghouses, and health plans that wish access to the Medicare database are required to complete this form. The information will be used to assure that those entities that access the Medicare database are aware of applicable provisions and penalties; *Frequency:* Recordkeeping and Reporting—One time; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 122,000; *Total Annual Responses:* 122,000; *Total Annual Hours:* 45,000.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Medicare Health Support Program Medical Records Abstraction; *Form Number:* CMS–10172 (OMB#: 0938–New); *Use:* The Medicare Health Support Program (MHS) is authorized under Section 721 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). There are eight Medicare Health Support Organizations (MHSOs) that have signed cooperative agreements with the Centers for Medicare & Medicaid Services (CMS) to provide care support services to targeted Medicare fee-for-service (FFS) beneficiaries. The purposes of the MHS program are to improve the quality of healthcare provided to Medicare FFS beneficiaries with congestive heart failure and/or diabetes and to reduce the healthcare treatment cost to Medicare. MHS performance measures provide CMS with information to monitor the program operations and identify positive or negative program effects, provide MHSOs with feedback, and

serve as the basis for MHS performance guarantees. To meet these requirements, CMS has developed a performance monitoring system for MHS. This system includes measures of clinical performance that require the collection of clinical data from the medical records of a sample of Medicare beneficiaries. Medical record abstraction will be performed in two phases: The first, a pilot test, will take place after approximately six months of program operations, and the second, the full study. CMS will obtain active informed consent from the affected beneficiaries prior to reviewing medical records; *Frequency:* Reporting—Other: Only Once; *Affected Public:* Individuals or Households and Business or other for-profit; *Number of Respondents:* 26,643; *Total Annual Responses:* 26,643; *Total Annual Hours:* 12,416.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare—Determining Third Party Liability (TPL) State Plan Preprint and Supporting Regulations in 42 CFR 433.138; *Form Number:* CMS–R–0107 (OMB#: 0938–0502); *Use:* Medicaid beneficiaries frequently have third party resources which are legally obligated to pay medical claims before Medicaid pays. Section 42 CFR 433.138 requires State Medicaid agencies to take specific steps to identify third party resources and determine their legal liability to pay for services under the plan. The collection of TPL information results in significant program savings to the extent that liable third parties can be identified and payments can be made for services that would otherwise be paid for by the Medicaid program. The State Medicaid agencies are the primary users of the collected data. Whenever States identify third party resources, pertinent information is entered into the State's Medicaid Management Information System (MMIS). This enables the State to advise the provider to bill the third party and to seek reimbursement in situations where Medicaid TPL claims have been paid; *Frequency:* Recordkeeping—On occasion; *Affected Public:* Individuals or Households and Federal, State, Local and Tribal Government; *Number of Respondents:* 2,700,000; *Total Annual Responses:* 2,700,000; *Total Annual Hours:* 472,259.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Retirement Benefit Information (BBA '97); *Form Number:* CMS–R–285 (OMB#: 0938–0769); *Use:* The Request for Retirement Benefit Information form is used to obtain retirement benefit information from beneficiaries that purchase Medicare Part A coverage. The Social Security Administration (SSA) will use this information to determine if a beneficiary meets the requirements to qualify for a Medicare Part A premium reduction; *Frequency:* Reporting—On occasion; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 1500; *Total Annual Responses:* 1500; *Total Annual Hours:* 375.

To obtain copies of the supporting statement and any related forms for these 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 at (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 January 30, 2006.

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 21, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–24567 Filed 12–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0216]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Devices; Humanitarian Use Devices'' 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 Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 24, 2005 (70 FR 61455), 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 0910–0332. The approval expires on December 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: December 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8110 Filed 12–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0195]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Mammography Quality Standards Act Final Regulations; Modifications and Additions to Policy Guidance Help System #9

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 January 30, 2006.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie

Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

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.

Mammography Quality Standards Act Final Regulations; Modifications and Additions to Policy Guidance Help System #9

The Mammography Quality Standards Act (MQSA) Final Regulations: Modifications and Additions to Policy Guidance Help System 9 provides guidance to mammography facilities and their personnel on a variety of issues involving the quality standards for mammography (§ 900.12 (21 CFR 900.12)). Use of the guidance results in new collections of information. Facilities are required to provide patients with lay summaries of the results of their mammography examinations (§ 900.12(c)(2)). This guidance document provides information on how to address a patient's refusal to receive a lay summary and recommends that the facility document why it was unable to meet this requirement. Additionally, the guidance addresses interpreting physician initial requirements (§ 900.12(a)(1)(i)(B)(*2*)), including recommendations on how to document the alternative to Board Certification for foreign-trained physicians.

The likely respondents are mammography facilities and their personnel who are subject to the MQSA quality standards requirements.

In the **Federal Register** of July 15, 2005 (70 FR 41043), FDA published a 60-day notice requesting comments 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]

Activity	Number of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
Reporting of refusal of lay summary	915	1	915	0.5	458

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	Number of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours Per Record	Total hours
Documentation of foreign-trained physicians' qualifications	92	1	92	8	736

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

There are a total of 9,150 MQSA-certified facilities. Using past experience, FDA estimates that 10 percent of these facilities will receive patient requests that lay summary results not be sent. We also estimate that the facility will spend 0.5 hours per patient obtaining the patient's written request, filing that form in the patient's record and forwarding the summary to the patient's designee. With respect to foreign-trained physicians, past experience indicates that this situation arises very infrequently. We estimate that only 1 percent of MQSA-certified facilities will have to maintain records documenting the qualifications of foreign-trained physicians.

Dated: December 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8111 Filed 12–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0217]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Cosmetic Product Voluntary Reporting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Cosmetic Product Voluntary Reporting Program'' 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 Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 11, 2005 (70 FR 59073), 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 0910–0030. The approval expires on December 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: December 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8112 Filed 12–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0178]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Regulations Under the Federal Import Milk Act'' 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 Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 7, 2005 (70 FR 58709), 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 0910–0212. The approval expires on December 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: December 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8114 Filed 12–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D–0489] (formerly Docket No. 01D–0489)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees

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 January 30, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. 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: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

Submit written requests for single copies of the draft guidance dated December 2005 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (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.

Draft Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees

The draft guidance document, when finalized, is intended to assist sponsors of clinical trials in determining when a Data Monitoring Committee (DMC) is needed for study monitoring, and how such committees should operate. The draft guidance was revised based on public comments. The draft guidance addresses the roles, responsibilities, and operating procedures of DMCs, and describes certain reporting and recordkeeping responsibilities including the following: (1) Sponsor notification to the DMC regarding waivers of expedited reporting, (2) DMC reports of meeting minutes to the sponsor, (3) sponsor reporting to FDA on DMC safety-related recommendations, (4) standard operating procedures (SOPs) for DMCs, (5) DMC meeting records, and (6) DMC reports to the sponsor.

A. Sponsor Notification to the DMC Regarding Waivers

The sponsor has the responsibility of reporting to FDA serious, unexpected adverse events in drugs and biologics trials under part 312 (21 CFR part 312) in § 312.32 and unanticipated adverse events in the case of device trials under part 812 (21 CFR part 812) in § 812.150(b)(1). We recommend in the draft guidance that sponsors notify DMCs about any waivers granted by FDA for expedited reporting of certain serious events.

B. DMC Report of Meeting Minutes to the Sponsor

FDA recommends in the draft guidance that the DMC issue a written report to the sponsor based on the meeting minutes. Reports to the sponsor should include only those data generally available to the sponsor. The sponsor may convey the relevant information in this report to other interested parties such as study investigators. Meeting minutes or other information that include discussion of confidential data would not be provided to the sponsor.

C. Sponsor reporting to FDA on DMC Safety-Related Recommendations

The requirement of the sponsor to report DMC recommendations related to serious adverse events in an expedited manner in clinical trials of new drugs (§ 312.32(c)) would not apply when the DMC recommendation is related to an excess of events not classifiable as

serious. Nevertheless, we recommend in the draft guidance that sponsors inform FDA about all recommendations related to the safety of the investigational product whether or not the adverse event in question meets the definition of ''serious.''

D. Standard Operating Procedures

In the draft guidance, FDA recommends that sponsors establish procedures to do the following things:

- Assess potential conflicts of interest of proposed DMC members;
- Ensure that those with serious conflicts of interest are not included on the DMC;
- Provide disclosure to all DMC members of any potential conflicts that are not thought to impede objectivity and, thus, would not preclude service on the DMC;
- Identify and disclose any concurrent service of any DMC member on other DMCs of the same, related or competing products;
- Ensure separation, and designate a different statistician to advise on the management of the trial, if the primary study statistician takes on the responsibility for interim analysis and reporting to the DMC; and
- Minimize the risks of bias that are associated with such arrangements, if the primary study statistician takes on the responsibility for interim analysis and reporting to the DMC, and it appears infeasible or highly impractical for any other statistician to take over responsibilities related to trial management.

E. Meeting Records

FDA recommends in the draft guidance that the DMC or the group preparing the interim reports to the DMC maintain all meeting records. This information should be submitted to FDA with the clinical study report (§ 314.50(d)(5)(ii) (21 CFR 314.50(d)(5)(ii))).

Description of Respondents: The submission and data collection recommendations described in this document affect sponsors of clinical trials and DMCs.

Burden Estimate: Table 1 of this document provides the burden estimate of the annual reporting burden for the information to be submitted in accordance with the revised draft guidance. Table 2 of this document provides the burden estimate of the annual recordkeeping burden for the information to be maintained in accordance with the revised draft guidance.

Based on information from FDA review divisions, FDA estimates there are currently 740 clinical trials with DMCs regulated by CBER, the Center for Drug Evaluation and Research, and the Center for Devices and Radiological Health. FDA estimates that the average length of a clinical trial is 2 years, resulting in an annual estimate of 370 clinical trials. Because FDA has no information on which to project a change in the use of DMCs, FDA estimates that the number of clinical trials with DMCs will not change significantly in the next few years. For purposes of this information collection, FDA estimates that each sponsor is responsible for approximately 10 trials, resulting in an estimated 37 sponsors affected by the guidance annually.

Based on information provided to FDA by sponsors that have typically used DMCs for the kinds of studies for which this draft guidance recommends them, FDA estimates that the majority of sponsors have already prepared SOPs for DMCs, and only a minimum amount of time would be necessary to revise or update them for use for other clinical studies. FDA receives very few requests for waivers regarding expedited reporting of certain serious events, therefore, FDA has estimated one respondent per year to account for the rare instance a request may be made. FDA estimates that the DMCs would hold two meetings per year per clinical trial resulting in the issuance of two DMC reports of the meeting minutes to the sponsor. One set of both of the meeting records should be maintained per clinical trial.

The ''Hours per Response'' and ''Hours per Record'' are based on FDA's experience with comparable recordkeeping and reporting provisions applicable to FDA regulated industry. The ''Hours per Response'' include the time the respondent would spend reviewing, gathering, and preparing the information to be submitted to the DMC, FDA, or the sponsor. The ''Hours per Record'' include the time to record, gather, and maintain the information.

In the **Federal Register** of November 20, 2001 (FR 66 58151), FDA published a 60-day notice requesting public comment on the information collection provisions in the draft guidance. FDA received a number of comments on the draft guidance, however, only one letter of comment included comments regarding the information collection provisions.

The comment stated that the ''Hours per Response'' were underestimated for the SOPs and Data Analysis Plan (statistical approach) listed in table 1 of the 60-day notice (66 FR 58151 at 58153) for the ''Estimated Annual Reporting Burden.'' The comment requested an increase to 12 hours for these burdens from the previous estimate of 4 hours for the SOPs, and 8 hours for the Data Analysis Plan.

In revising the draft guidance, FDA is adding the applicable regulations throughout the draft guidance including the regulations associated with these two burden estimates. The burden associated with the submission of SOPs and the statistical approach in table 1 of the 60-day notice is covered under §§ 312.23 and 812.150(b)(10) and is approved under OMB Control Nos. 0910–0014 and 0910–0078. Therefore, these categories were removed from table 1 and no change in the burden estimates is necessary.

Based on revisions to the draft guidance, however, two additional information collection burdens have been added to table 1 of this document, and one additional previous information collection burden was deleted from table 1 of the 60-day notice.

The information collection provisions in the draft guidance for §§ 312.30, 312.32, 312.38, 312.55, and 312.56 have been approved under OMB Control No. 0910–0014; § 314.50 has been approved under OMB Control No. 0910–0001; and §§ 812.35 and 812.150 have been approved under OMB Control No. 0190–0078.

The total estimated burden for both the reporting and recordkeeping burdens under the draft guidance are 1,794.75 hours.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of Draft Guidance/ Reporting Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
4.4.1.2 Sponsor notification to the DMC regarding waivers of expedited reporting	1	1	1	.25	.25

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Section of Draft Guidance/ Reporting Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
4.4.3.2 DMC reports of meeting minutes to the sponsor	370	2	740	1	740
5 Sponsor reporting to FDA on DMC safety-related recommendations	37	1	37	.5	18.5
Total					758.75

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Reporting Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
4.1 and 6.4 SOPs for DMCs	37	1	37	8	296
4.4.3.2 DMC meeting records	370	1	370	2	740
Total					1,036

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8115 Filed 12–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Privacy Act System of Records

AGENCY: Indian Health Service (IHS), HHS.

ACTION: Amendment of one altered Privacy Act system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), the IHS has amended and is publishing the proposed alteration of a system of records, System No. 09–17–0001, ''Medical, Health and Billing Records.'' The amended and altered system of records makes only administrative edits and revisions as necessary.

DATES: The amended and altered system, which incorporates the comments received following the initial publication, shall become effective December 30, 2005.

FOR FURTHER INFORMATION: Contact Ms. Patricia Gowan, IHS Lead Health Information Management (HIM) Consultant (Acting), Office of Health Programs, Phoenix Area Office IHS, Two Renaissance Square, Suite 606, 40 North Central Avenue, Phoenix, AZ 85004 or via the Internet at *Patricia.Gowan@ihs.gov*.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), this document sets forth the amendment of the proposed alteration of a system of records maintained by the IHS, in response to comments received following the initial publication in the **Federal Register** at 70 FR 49931 on August 25, 2005. The purpose of altering System No. 09–17–0001, ''Health and Medical Records,'' is to enable the IHS to clarify that IHS also uses the records in the system to process, document, and monitor third-party payment billing and reimbursement claims, in addition to debt collection activities; to include contract health service records; to include several new and modified purposes and new and modified routine uses that are in line with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule provisions and Agency policy changes. IHS published the notification of the altered Privacy Act system of records in the **Federal Register** on August 25, 2005. During the comment period, IHS received several responses from the public. After a careful review of their concerns, IHS does not agree with the suggested changes and therefore has not revised the notice. One of the commentors suggested revising routine use #10 so that it would provide an exception that would enable IHS to disclose patient health information for public health purposes. IHS has decided not to accept the recommendation of this comment because the IHS already complies with state laws that specifically require disclosures of health information for public health activities under the current routine use #7. In addition, the proposed routine use #10 modifies and replaces the current routine use #7 to allow disclosures ''as authorized by law'' which is a broader standard than the current ''as required by law'' standard. In fact, the particular example submitted by the commentor in support of the recommendation does not meet the public health authority and activities criteria of the HIPAA Privacy Rule. The Nevada State Pharmacy Board is not a public health authority and reporting such information to a state database appears to be primarily for law enforcement purposes. The Nevada statute also does not specifically require IHS or other Federal agencies to report to their database.

Another comment stated that ''IHS consider changing the permissive word ''may'' to the mandatory word ''shall'' in regards to the proposed Routine Use Number 23.'' In response to the comment, IHS has decided to reject the comment based on the fact that routine use disclosures are not mandatory but are discretionary disclosures made by the appropriate IHS Privacy Act System Manager for which is defined in the Privacy Act of 1974, as amended, 5 U.S.C. 552a; and the OMB Privacy Act Implementation Guidelines and Responsibilities of July 9, 1975.

The revision or modification of various IHS and Federal Records addresses in Appendix 1 and Appendix 2 is necessary to this system of records as administrative edits or changes. In Appendix 1, the address for the Fort McDermitt Clinic under the Phoenix Area IHS was inadvertently omitted;

and under Appendix 2, the Federal Archives and Records Center located in Laguna Niguel, California has moved to Perris, California as noted by the IHS Records Officer.

This Notice meets the requirement to notify the public that the IHS is amending the proposed changes in the IHS system of records by incorporating the administrative changes following the initial publication at 70 FR 49931, August 25, 2005. With this notification, this system of records is effective December 30, 2005.

09–17–0001

SYSTEM NAME:

Medical, Health, and Billing Records Systems, HHS/IHS/OHP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Indian Health Service (IHS) hospitals, health centers, school health centers, health stations, field clinics, Service Units, IHS Area Offices (Appendix 1), and Regional Federal Records Centers (Appendix 2). Automated, electronic and computerized records, including Patient Care Component (PCC) records, are stored at the Information Technology Support Center (ITSC), IHS, located in Albuquerque, New Mexico (Appendix 1). Records may also be located at contractor sites. A current list of contractor sites is available by writing to the appropriate System Manager (Area or Service Unit Director/Chief Executive Officer) at the address shown in Appendix 1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including both IHS beneficiaries and non-beneficiaries, who are examined/treated on an inpatient and/or outpatient basis by IHS staff and/or contract health care providers (including tribal contractors).

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: Records relating to claims by and against DHHS are maintained in the Administrative Claims System, 09–90–0062, HHS/OS/OGC. Such claims include those arising under the Federal Torts Claims Act, Military Personnel and Civilian Employees Claims Act, Federal Claims Collection Act, Federal Medical Care Recovery Act, and Act for Waiver of Overpayment of Pay.

1. Health and medical records containing examination, diagnostic and treatment data, proof of IHS eligibility, social data (such as name, address, date of birth, Social Security Number (SSN), tribe), laboratory test results, and dental, social service, domestic violence, sexual abuse and/or assault, mental health, and nursing information.

2. Follow-up registers of individuals with a specific health condition or a particular health status such as cancer, diabetes, communicable diseases, suspected and confirmed abuse and neglect, immunizations, suicidal behavior, or disabilities.

3. Logs of individuals provided health care by staff of specific hospital or clinic departments such as surgery, emergency, obstetric delivery, medical imaging, and laboratory.

4. Surgery and/or disease indices for individual facilities that list each relevant individual by the surgery or disease.

5. Monitoring strips and tapes such as fetal monitoring strips and EEG and EKG tapes.

6. Third-party reimbursement and billing records containing name, address, date of birth, dates of service, third party insurer claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to process and validate third-party reimbursement claims.

7. Contract Health Service (CHS) records containing name, address, date of birth, dates of care, Medicare or Medicaid claim numbers, SSN, health plan name, insurance number, employment status, and other relevant claim information necessary to determine CHS eligibility and to process CHS claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations (5 U.S.C. 301); Privacy Act of 1974 (5 U.S.C. 552a); Federal Records Act (44 U.S.C. 2901); Section 321 of the Public Health Service Act, as amended (42 U.S.C. 248); Section 327A of the Public Health Service Act, as amended (42 U.S.C. 254a); Snyder Act (25 U.S.C. 13); Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*); and the Transfer Act of 1954 (42 U.S.C. 2001–2004).

PURPOSES:

The purposes of this system are:

1. To provide a description of an individual's diagnosis, treatment and outcome, and to plan for immediate and future care of the individual.

2. To provide statistical data to IHS officials in order to evaluate health care programs and to plan for future needs.

3. To serve as a means of communication among members of the health care team who contribute to the individual's care; e.g., to integrate information from field visits with records of treatment in IHS facilities and with non-IHS health care providers.

4. To serve as the official documentation of an individual's health care.

5. To contribute to continuing education of IHS staff to improve the delivery of health care services.

6. For disease surveillance purposes. For example:

(a) The Centers for Disease Control and Prevention (CDC) may use these records to monitor various communicable diseases;

(b) The National Institutes of Health (NIH) may use these records to review the prevalence of particular diseases (e.g., malignant neoplasms, diabetes mellitus, arthritis, metabolism, and digestive diseases) for various ethnic groups of the United States; or

(c) Those public health authorities that are authorized by law may use these records to collect or receive such information for purposes of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death and the conduct of public health surveillance, investigations, and interventions.

7. To compile and provide aggregated program statistics. Upon request of other components of the Department of Health and Human Services (DHHS), IHS will provide statistical information, from which individual/personal identifiers have been removed, such as:

(a) To the National Committee on Vital and Health Statistics (NCVHS) for its dissemination of aggregated health statistics on various ethnic groups;

(b) To the Assistant Secretary for Planning and Evaluation (ASPE), Health Policy to keep a record of the number of sterilizations provided by federal funding;

(c) To the Centers for Medicare & Medicaid Services (CMS) to document IHS health care covered by the Medicare and Medicaid programs for third-party reimbursement; or

(d) To the Office of Clinical Standards and Quality, CMS to determine the prevalence of end-stage renal disease among the American Indian and Alaska Native (AI/AN) population and to coordinate individual care.

8. To process and collect third-party claims and facilitate fiscal intermediary functions and to process debt collection activities.

9. To improve the IHS national patient care database by means of obtaining and verifying an individual's SSN with the Social Security Administration (SSA).

10. To provide information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of organs to

facilitate organ, eye, or tissue donation and transplant.

11. To provide information to individuals about treatment alternatives or other types of health-related benefits and services.

12. To provide information to the Food and Drug Administration (FDA) in connection with an FDA-regulated product or activity.

13. To provide information to correctional institutions as necessary for health and safety purposes.

14. To provide information to governmental authorities (e.g., social services or protective services agencies) on victims of abuse, neglect, sexual assault or domestic violence.

15. To provide information to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2901 *et seq.*

16. To provide relevant health care information to funeral directors or representatives of funeral homes to allow necessary arrangements prior to and in anticipation of an individual's impending death.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records contains individually identifiable health information. The DHHS Privacy Act Regulations (45 CFR part 5b) and the Privacy Rule (45 CFR parts 160 and 164) issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 apply to most health information maintained by IHS. Those regulations may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. An accounting of all disclosures of a record made pursuant to the following routine uses will be made and maintained by IHS for five years or for the life of the records, whichever is longer.

Note: Special requirements for alcohol and drug abuse patients: If an individual receives treatment or a referral for treatment for alcohol or drug abuse, then the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR part 2 may apply. In general, under these regulations, the only disclosures of the alcohol or drug abuse record that may be made without patient consent are: (1) To meet medical emergencies (42 CFR 2.51), (2) for research, audit, evaluation and examination (42 CFR 2.52 and 2.53), (3) pursuant to a court order (42 CFR 2.61–2.67), and (4) pursuant to a qualified service organization agreement, as defined in 42 CFR 2.11. In all other situations, written consent of the individual is usually required prior to disclosure of alcohol or drug abuse information under the routine uses listed below.

1. Records may be disclosed to Federal and non-federal (public or private) health care providers that provide health care services to IHS individuals for purposes of planning for or providing such services, or reporting results of medical examination and treatment.

2. Records may be disclosed to Federal, State, local or other authorized organizations that provide third-party reimbursement or fiscal intermediary functions for the purposes of billing or collecting third-party reimbursements. Relevant records may be disclosed to debt collection agencies under a business associate agreement arrangement directly or through a third party.

3. Records may be disclosed to state agencies or other entities acting pursuant to a contract with CMS, for fraud and abuse control efforts, to the extent required by law or under an agreement between IHS and respective state Medicaid agency or other entities.

4. Records may be disclosed to school health care programs that serve AI/AN for the purpose of student health maintenance.

5. Records may be disclosed to organizations deemed qualified by the Secretary of DHHS and under a business associate agreement to carry out quality assessment/improvement, medical audits, utilization review or to provide accreditation or certification of health care facilities or programs.

6. Records may be disclosed under a business associate agreement to individuals or authorized organizations sponsored by IHS, such as the National Indian Women's Resource Center, to conduct analytical and evaluation studies.

7. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. No authorization, Form IHS 810, is required for the disclosure of protected health information (PHI) contained in the medical record, unless sensitive information (e.g., alcohol/drug abuse patient information, HIV/AIDS, STD, or mental health) is included.

8. Records may be disclosed for research purposes to the extent permitted by:

(a) Determining that the use(s) or disclosure(s) are met under 45 CFR 164.512(i), or

(b) Determining that the use(s) or disclosure(s) are met under 45 CFR 164.514(a) through (c) for de-identified PHI, and 5 U.S.C. 552a(b)(5), or

(c) Determining that the requirements of 45 CFR 164.514(e) for limited data sets, and 5 U.S.C. 552a(b)(5) are met.

9. Information from records, such as information concerning the commission of crimes, suspected cases of abuse (including child, elder and sexual abuse), neglect, sexual assault or domestic violence, births, deaths, alcohol or drug abuse, immunizations, cancer, or the occurrence of communicable diseases, may be disclosed to public health authorities or other appropriate government authorities, as authorized by Federal, State, tribal or local law or regulation of the jurisdiction in which the facility is located.

Note: In federally conducted or assisted alcohol or drug abuse programs, under 42 CFR part 2, disclosure of patient information for purposes of criminal investigations must be authorized by court order issued under 42 CFR 2.65, except that reports of suspected child abuse may be made to the appropriate state or local authorities under state law.

10. Information may be disclosed from these records regarding suspected cases of child abuse to:

(a) Federal, State or tribal agencies that need to know the information in the performance of their duties, and

(b) Members of community child protection teams for the purposes of investigating reports of suspected child abuse, establishing a diagnosis, formulating or monitoring a treatment plan, and making recommendations to the appropriate court. Community child protection teams are comprised of representatives of tribes, the BIA, child protection service agencies, the judicial system, law enforcement agencies and IHS.

11. IHS may disclose information from these records in litigations and/or proceedings related to an administrative claim when:

(a) IHS has determined that the use of such records is relevant and necessary to the litigation and/or proceedings related to an administrative claim and would help in the effective representation of the affected party listed in subsections (i) through (iv) below, and that such disclosure is compatible with the purpose for which the records were collected. Such disclosure may be made to the DHHS/Office of General Counsel (OGC) and/or Department of Justice (DOJ), pursuant to an agreement between IHS and OGC, when any of the following is a party to litigation and/or proceedings related to an administrative claim or has an

interest in the litigation and/or proceedings related to an administrative claim:

(i) DHHS or any component thereof; or

(ii) Any DHHS employee in his or her official capacity; or

(iii) Any DHHS employee in his or her individual capacity where the DOJ (or DHHS, where it is authorized to do so) has agreed to represent the employee; or

(iv) The United States or any agency thereof (other than DHHS) where HHS/OGC has determined that the litigation and/or proceedings related to an administrative claim is likely to affect DHHS or any of its components.

(b) In the litigation and/or proceedings related to an administrative claim described in subsection (a) above, information from these records may be disclosed to a court or other tribunal, or to another party before such tribunal in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the information expressly authorized by such order.

12. Records may be disclosed under a business associate agreement to an IHS contractor for the purpose of computerized data entry, medical transcription, duplication services, or maintenance of records contained in this system.

13. Records may be disclosed under a personal services contract or other agreement to student volunteers, individuals working for IHS, and other individuals performing functions for IHS who do not technically have the status of agency employees, if they need the records in the performance of their agency functions.

14. Records regarding specific medical services provided to a unemancipated minor individual may be disclosed to the unemancipated minor's parent or legal guardian who previously consented to those specific medical services, to the extent permitted under 45 CFR 164.502(g).

15. Records may be disclosed to an individual having authority to act on behalf of an incompetent individual concerning health care decisions, to the extent permitted under 45 CFR 164.502(g).

16. Information may be used or disclosed from an IHS facility directory in response to an inquiry about a named individual from a member of the general public to establish the individual's presence (and location when needed for visitation purposes) or to report the individual's condition while hospitalized (*e.g.*, satisfactory or stable), unless the individual objects to disclosure of this information. IHS may provide the religious affiliation only to members of the clergy.

17. Information may be disclosed to a relative, a close personal friend, or any other person identified by the individual that is directly relevant to that person's involvement with the individual's care or payment for health care.

Information may also be used or disclosed in order to notify a family member, personal representative, or other person responsible for the individual's care, of the individual's location, general condition or death.

If the individual is present or otherwise available prior to use or disclosure, and is competent to make health care decisions;

(a) May use or disclose after the facility obtains the individual's consent,

(b) Provides the individual with the opportunity to object and the individual does not object, or

(c) It could reasonably infer, based on professional judgment, that the individual does not object.

If the individual is not present, or the opportunity to agree or object cannot practicably be provided due to incapacity or emergent circumstances, an IHS health care provider may determine, based on professional judgment, whether disclosure is in the individual's best interest, and if so, may disclose only what is directly relevant to the individual's health care.

18. Information concerning exposure to the HIV may be disclosed, to the extent authorized by Federal, State or tribal law, to the sexual and/or needle-sharing partner(s) of a subject individual who is infected with HIV under the following circumstances:

(a) The information has been obtained in the course of clinical activities at IHS facilities;

(b) IHS has made reasonable efforts to counsel and encourage the subject individual to provide information to the individual's sexual or needle-sharing partner(s);

(c) IHS determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and

(d) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(e) IHS has advised the partner(s) to whom information is disclosed that they shall not re-disclose or use such information for a purpose other than that for which the disclosure was made.

19. Records may be disclosed to federal and non-federal protection and advocacy organizations (P&A) that serve AI/AN for the purpose of investigating incidents of abuse and neglect of individuals with developmental disabilities (including mental disabilities), as defined in 42 U.S.C. 10801–10805(a)(4) and 42 CFR 51.41–46, to the extent that such disclosure is authorized by law and the conditions of 45 CFR 1386.22(a)(2) are met.

20. Records of an individual may be disclosed to a correctional institution or a law enforcement official, during the period of time the individual is either an inmate or is otherwise in lawful custody, for the provision of health care to the individual or for health and safety purposes. Disclosure may be made upon the representation of either the institution or a law enforcement official that disclosure is necessary for the provision of health care to the individual, for the health and safety of the individual and others (*e.g.*, other inmates, employees of the correctional facility, transport officers), and for facility administration and operations. This routine use applies only for as long as the individual remains in lawful custody, and does not apply once the individual is released on parole or placed on either probation or on supervised release, or is otherwise no longer in lawful custody.

21. Records including patient name, date of birth, SSN, gender and other identifying information may be disclosed to the SSA as is reasonably necessary for the purpose of conducting an electronic validation of the SSN(s) maintained in the record to the extent required under an agreement between IHS and SSA.

22. Disclosure of relevant health care information may be made to funeral directors or representatives of funeral homes in order to allow them to make necessary arrangements prior to and in anticipation of an individual's impending death.

23. Records may be disclosed to a public or private covered entity that is authorized by law or charter to assist in disaster relief efforts (e.g., the Red Cross and the Federal Emergency Management Administration (FEMA)), for purposes of coordinating information with other similar entities concerning an individual's health care, payment for health care, notification of the individual's whereabouts and his or her health status or death.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, ledgers, card files, microfiche, microfilm, computer tapes, disk packs, digital photo discs, and automated, computer-based or electronic files.

RETRIEVABILITY:

Indexed by name, record number, and SSN and cross-indexed.

SAFEGUARDS:

Safeguards apply to records stored on-site and off-site.

1. *Authorized Users:* Access is limited to authorized IHS personnel, volunteers, IHS contractors, subcontractors, and other business associates in the performance of their duties. Examples of authorized personnel include: Medical records personnel, business office personnel, contract health staff, health care providers, authorized researchers, medical audit personnel, health care team members, and legal and administrative personnel on a need to know basis.

2. *Physical Safeguards:* Records are kept in locked metal filing cabinets or in a secured room or in other monitored areas accessible to authorized users at all times when not actually in use during working hours and at all times during non-working hours. Magnetic tapes, disks, other computer equipment (e.g., pc workstations) and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. Telecommunication equipment (e.g., computer terminal, servers, modems and disks) of the Resource and Patient Management System (RPMS) are maintained in locked rooms during non-working hours. Network (Internet or Intranet) access of authorized individual(s) to various automated and/or electronic programs or computers (e.g., desktop, laptop, handheld or other computer types) containing protected personal identifiers or personal health information (PHI) is reviewed periodically and controlled for authorizations, accessibility levels, expirations or denials, including passwords, encryptions or other devices to gain access. Combinations and/or electronic passcards on door locks are changed periodically and whenever an IHS employee resigns, retires or is reassigned.

3. *Procedural Safeguards:* Within each facility a list of personnel or categories of personnel having a demonstrable need for the records in the performance of their duties has been developed and is maintained. Procedures have been developed and implemented to review one-time requests for disclosure to personnel who may not be on the authorized user list. Proper charge-out procedures are followed for the removal of all records from the area in which they are maintained. Records may not be removed from the facility except in certain circumstances, such as compliance with a valid court order or shipment to the Federal Records Center(s). Persons who have a need to know are entrusted with records from this system of records and are instructed to safeguard the confidentiality of these records. These individuals are to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act and the HIPAA Privacy Rule as adopted, and to destroy all copies or to return such records when the need to know has expired. Procedural instructions include the statutory penalties for noncompliance.

The following automated information systems (AIS) security procedural safeguards are in place for automated health and medical records maintained in the RPMS. A profile of automated systems security is maintained. Security clearance procedures for screening individuals, both Government and contractor personnel, prior to their participation in the design, operation, use or maintenance of IHS AIS are implemented. The use of current passwords and log-on codes are required to protect sensitive automated data from unauthorized access. Such passwords and codes are changed periodically. An automated or electronic audit trail is maintained and reviewed periodically. Only authorized IHS Division of Information Resources staff may modify automated files in batch mode. Personnel at remote terminal sites may only retrieve automated or electronic data. Such retrievals are password protected. Privacy Act requirements, HIPAA Privacy Rule and Security requirements and specified AIS security provisions are specifically included in contracts and agreements and the system manager or his/her designee oversee compliance with these contract requirements.

4. *Implementing Guidelines:* DHHS Chapter 45–10 and supplementary Chapter PHS.hf: 45–10 of the General Administration Manual; DHHS, ''Automated Information Systems Security Program Handbook,'' as amended; DHHS IRM Policy HHS–IRM–2000–0005, ''IRM Policy for IT Security for Remote Access''; OMB Circular A–130 ''Management of Federal Information Resources''; HIPAA Security Standards for the Protection of Electronic Protected Health Information, 45 CFR 164.302 through 164.318; and E-Government Act of 2002 (Public Law 107–347, 44 U.S.C. Ch 36).

RETENTION AND DISPOSAL:

Patient listings which may identify individuals are maintained in IHS Area and Program Offices permanently. Inactive records are held at the facility that provided health and billing services from three to seven years and then are transferred to the appropriate Federal Records Center. Monitoring strips and tapes (e.g., fetal monitoring strips, EEG and EKG tapes) that are not stored in the individual's official medical record are stored at the health facility for one year and are then transferred to the appropriate Federal Records Center. (See Appendix 2 for Federal Records Center addresses). In accordance with the records disposition authority approved by the Archivist of the United States, paper records are maintained for 75 years after the last episode of individual care except for billing records. The retention and disposal methods for billing records will be in accordance with the approved IHS Records Schedule. The disposal methods of paper medical and health records will be in accordance with the approved IHS Records Schedule. The electronic data consisting of the individual personal identifiers and PHI maintained in the Resource and Patient Management System (RPMS) or any subsequent revised IHS database system should be inactivated once the paper record is forwarded to the appropriate Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Coordinating Official: Director, Office of Clinical and Preventive Services, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 300, Rockville, Maryland, 20852–1627. See Appendix 1. The IHS Area Office Directors, Service Unit Directors/Chief Executive Officers and Facility Directors listed in Appendix 1 are System Managers.

NOTIFICATION PROCEDURE:

General Procedure: Requests must be made to the appropriate System Manager (IHS Area, Program Office Director or Service Unit Director/Chief Executive Officer). A subject individual who requests a copy of, or access to, his or her medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents.

Such a representative may be an IHS health professional. When a subject individual is seeking to obtain information about himself/herself that may be retrieved by a different name or identifier than his/her current name or identifier, he/she shall be required to produce evidence to verify that he/she is the person whose record he/she seeks. No verification of identity shall be required where the record is one that is required to be disclosed under the Freedom of Information Act (FOIA). Where applicable, fees for copying records will be charged in accordance with the schedule set forth in 45 CFR Part 5b.

Requests In Person: Identification papers with current photographs are preferred but not required. If a subject individual has no identification but is personally known to the designated agency employee, such employee shall make a written record verifying the subject individual's identity. If the subject individual has no identification papers, the responsible system manager or designated agency official shall require that the subject individual certify in writing that he/she is the individual whom he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine. If an individual is unable to sign his/her name when required, he/she shall make his/her mark and have the mark verified in writing by two additional persons.

Requests By Mail: Written requests must contain the name and address of the requester, his/her date of birth and at least one other piece of information that is also contained in the subject record, and his/her signature for comparison purposes. If the written request does not contain sufficient information, the System Manager shall inform the requester in writing that additional, specified information is required to process the request.

Requests by Telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

Parents, Legal Guardians and Personal Representatives: Parents of minor children and legal guardians or personal representatives of legally incompetent individuals shall verify their own identification in the manner described above, as well as their relationship to the individual whose record is sought. A copy of the child's birth certificate or court order establishing legal guardianship may be required if there is any doubt regarding the relationship of the individual to the patient.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures: Requesters may write, call or visit the last IHS facility where medical care was provided. Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Requesters may write, call or visit the appropriate IHS Area/Program Office Director or Service Unit Director/Chief Executive Officer at his/her address specified in Appendix 1, and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual and/or family members, IHS health care personnel, contract health care providers, State and local health care provider organizations, Medicare and Medicaid funding agencies, and the SSA.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1—System Managers and IHS Locations Under Their Jurisdiction Where Records Are Maintained:

Director, Aberdeen Area Indian Health Service, Room 309, Federal Building, 115 Fourth Avenue, SE., Aberdeen, South Dakota 57401.

Director, Cheyenne River Service Unit, Eagle Butte Indian Hospital, P.O. Box 1012, Eagle Butte, South Dakota 57625.

Director, Crow Creek Service Unit, Ft. Thompson Indian Health Center, P.O. Box 200, Ft. Thompson, South Dakota 57339.

Director, Fort Berthold Service Unit, Fort Berthold Indian Health Center, P.O. Box 400, New Town, North Dakota 58763.

Director, Carl T. Curtis Health Center, P.O. Box 250, Macy, Nebraska 68039.

Director, Fort Totten Service Unit, Fort Totten Indian Health Center, P.O. Box 200, Fort Totten, North Dakota 58335.

Director, Kyle Indian Health Center, P.O. Box 540, Kyle, South Dakota 57752.

Director, Lower Brule Indian Health Center, P.O. Box 191, Lower Brule, South Dakota 57548.

Director, McLaughlin Indian Health Center, P.O. Box 879, McLaughlin, South Dakota 57642.

Director, Omaha-Winnebago Service Unit, Winnebago Indian Hospital, Winnebago, Nebraska 68071.

Director, Pine Ridge Service Unit, Pine Ridge Indian Hospital, Pine Ridge, South Dakota 57770.

Director, Rapid City Service Unit, Rapid City Indian Hospital, 3200 Canyon Lake Drive, Rapid City, South Dakota 57701.

Director, Rosebud Service Unit, Rosebud Indian Hospital, Rosebud, South Dakota 57570.

Director, Sisseton-Wahpeton Service Unit, Sisseton Indian Hospital, P.O. Box 189, Sisseton, South Dakota 57262.

Director, Standing Rock Service Unit, Fort Yates Indian Hospital, P.O. Box J, Fort Yates, North Dakota 58538.

Director, Trenton-Williston Indian Health Center, P.O. Box 210, Trenton, North Dakota 58853.

Director, Turtle Mountain Service Unit, Belcourt Indian Hospital, P.O. Box 160, Belcourt, North Dakota 58316.

Director, Wanblee Indian Health Center, 100 Clinic Drive, Wanblee, South Dakota 57577.

Director, Yankton-Wagner Service Unit, Wagner Indian Hospital, 110 Washington Street, Wagner, South Dakota 57380.

Director, Youth Regional Treatment Center, P.O. Box #68, Mobridge, South Dakota 57601.

Director, Sac & Fox Health Center, 307 Meskwaki Road, Tama, Iowa 52339.

Director, Santee Health Center, 425 Frazier Avenue, N ST Street #2, Niobrara, Nebraska 68760.

Director, Alaska Area Native Health Service, 4141 Ambassador Drive, Suite 300, Anchorage, Alaska 99508–5928.

Director, Albuquerque Area Health Service, 5300 Homestead Road, NE., Albuquerque, New Mexico 87110.

Director, Acoma-Canoncito-Laguna Service Unit, Acoma-Canoncito-Laguna Indian Hospital, P.O. Box 130, San Fidel, New Mexico 87049.

Director, To'Hajille Health Center, P.O. Box 3528, Canoncito, New Mexico 87026.

Director, New Sunrise Treatment Center, P.O. Box 219, San Fidel, New Mexico 87049.

Director, Albuquerque Service Unit, Albuquerque Indian Hospital, 801 Vassar Drive, NE., Albuquerque, New Mexico 87049.

Director, Albuquerque Indian Dental Clinic, P.O. Box 67830, Albuquerque, New Mexico 87193.

Director, Alamo Navajo Health Center, P.O. Box 907, Magdalena, New Mexico 87825.

Director, Jemez PHS Health Center, P.O. Box 279, Jemez, New Mexico 87024.

Director, Santa Ana PHS Health Center, P.O. Box 37, Bernalillo, New Mexico 87004.

Director, Sandia PHS Health Center, P.O. Box 6008, Bernalillo, New Mexico 87004.

Director, Zia PHS Health Center, 155 Capital Square, Zia, New Mexico 87053.

Director, Santa Fe Service Unit, Santa Fe Indian Hospital, 1700 Cerrillos Road, Santa Fe, New Mexico 87501.

Director, Santa Clara Health Center, RR5, Box 446, Espanola, New Mexico 87532.

Director, San Felipe Health Center, P.O. Box 4344, San Felipe, New Mexico 87001.

Director, Cochiti Health Center, P.O. Box 105, 255 Cochiti Street, Cochiti, New Mexico 87072.

Director, Santo Domingo Health Center, P.O. Box 340, Santo Domingo, New Mexico 87052.

Director, Southern Colorado-Ute Service Unit, P.O. Box 778, Ignacio, Colorado 81137.

Director, Ignacio Indian Health Center, P.O. Box 889, Ignacio, Colorado 81137.

Director, Towac Ute Health Center, Towaoc, Colorado 81334.

Director, Jicarilla Indian Health Center, P.O. Box 187, Dulce, New Mexico 87528.

Director, Mescalero Service Unit, Mescalero Indian Hospital, P.O. Box 210, Mescalero, New Mexico 88340.

Director, Taos/Picuris Indian Health Center, P.O. Box 1956, 1090 Goat Springs Road, Taos, New Mexico 87571.

Director, Zuni Service Unit, Zuni Indian Hospital, Zuni, New Mexico 87327.

Director, Pine Hill Health Center, P.O. Box 310, Pine Hill, New Mexico 87357.

Director, Bemidji Area Indian Health Service: 522 Minnesota Avenue, NW., Bemidji, Minnesota 56601.

Director, Red Lake Service Unit, PHS Indian Hospital, Highway 1, Red Lake, Minnesota 56671.

Director, Leech Lake Service Unit, PHS Indian Hospital, 425 7th Street, NW., Cass Lake, Minnesota 56633.

Director, White Earth Service Unit, PHS Indian Hospital, P.O. Box 358, White Earth, Minnesota 56591.

Director, Billings Area Indian Health Service, P.O. Box 36600, 2900 4th Avenue North, Billings, Montana 59101.

Director, Blackfeet Service Unit, Browning Indian Hospital, P.O. Box 760, Browning, Montana 59417.

Director, Heart Butte PHS Indian Health Clinic, Heart Butte, Montana 59448.

Director, Crow Service Unit, Crow Indian Hospital, Crow Agency, Montana 59022.

Director, Lodge Grass PHS Indian Health Center, Lodge Grass, Montana 59090.

Director, Pryor PHS Indian Health Clinic, P.O. Box 9, Pryor, Montana 59066.

Director, Fort Peck Service Unit, Poplar Indian Hospital, Poplar, Montana 59255.

Director, Fort Belknap Service Unit, Harlem Indian Hospital, Harlem, Montana 59526.

Director, Hays PHS Indian Health Clinic, Hays, Montana 59526.

Director, Northern Cheyenne Service Unit, Lame Dear Indian Health Center, Lame Deer, Montana 59043.

Director, Wind River Service Unit, Fort Washakie Indian Health Center, Fort Washakie, Wyoming 82514.

Director, Arapahoe Indian Health Center, Arapahoe, Wyoming 82510.

Director, Chief Redstone Indian Health Center, Wolf Point, Montana 59201.

Director, California Area Indian Health Service, John E. Moss Federal Building, 650 Capitol Mall, Suite 7–100, Sacramento, California 95814.

Director, Nashville Area Indian Health Service, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214–2634.

Director, Catawba PHS Indian Nation of South Carolina, P.O. Box 188, Catawba, South Carolina 29704.

Director, Unity Regional Youth Treatment Center, P.O. Box C—201, Cherokee, North Carolina 28719.

Director, Navajo Area Indian Health Service, P.O. Box 9020, Highway 264, Window Rock, Arizona 86515–9020.

Director, Chinle Service Unit, Chinle Comprehensive Health Care Facility, P.O. Drawer PH, Chinle, Arizona 86503.

Director, Tsaile Health Center, P.O. Box 467, Navajo Routes 64 & 12, Tsaile, Arizona 86556.

Director, Rock Point Field Clinic, c/o Tsaile Health Center, P.O. Box 647, Tsaile, Arizona 86557.

Director, Pinon Health Station, Pinon, Arizona 86510.

Director, Crownpoint Service Unit, Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313.

Director, Pueblo Pintado Health Station, c/o Crownpoint Comprehensive Health Care Facility, P.O. Box 358, Crownpoint, New Mexico 87313.

Director, Fort Defiance Service Unit, Fort Defiance Indian Hospital, P.O. Box 649, Intersection of Navajo Routes N12 & N7, Fort Defiance, Arizona 86515.

Director, Nahata Dziil Health Center, P.O. Box 125, Sanders, Arizona 86512

Director, Gallup Service Unit, Gallup Indian Medical Center, P.O. Box 1337, Nizhoni Boulevard, Gallup, New Mexico 87305.

Director, Tohatchi Indian Health Center, P.O. Box 142, Tohatchi, New Mexico 87325.

Director, Ft. Wingate Health Station, c/o Gallup Indian Medical Center, P.O. Box 1337, Gallup, New Mexico 87305.

Director, Kayenta Service Unit, Kayenta Indian Health Center, P.O. Box 368, Kayenta, Arizona 86033.

Director, Inscription House Health Center, P.O. Box 7397, Shonto, Arizona 86054.

Director, Dennehotso Clinic, c/o Kayenta Health Center, P.O. Box 368, Kayenta, Arizona 86033.

Director, Shiprock Service Unit, Northern Navajo Medical Center, P.O. Box 160, U.S. Hwy. 491 North, Shiprock, New Mexico 87420.

Director, Dzilth-Na-O-Dith-Hle Indian Health Center, 6 Road 7586, Bloomfield, New Mexico 87413.

Director, Teecnospos Health Center, P.O. Box 103, N5114 BIA School Road, Teecnospos, Arizona 86514.

Director, Sanostee Health Station, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.

Director, Toadlena Health Station, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.

Director, Teen Life Center, c/o Northern Navajo Medical Center, P.O. Box 160, Shiprock, New Mexico 87420.

Director, Oklahoma City Area Indian Health Service, Five Corporation Plaza, 3625 NW. 56th Street, Oklahoma City, Oklahoma 73112.

Director, Claremore Service Unit, Claremore Comprehensive Indian Health Facility, West Will Rogers Boulevard and Moore, Claremore, Oklahoma 74017.

Director, Clinton Service Unit, Clinton Indian Hospital, Route 1, Box 3060, Clinton, Oklahoma 73601–9303.

Director, El Reno PHS Indian Health Clinic, 1631A E. Highway 66, El Reno, Oklahoma 73036.

Director, Watonga Indian Health Center, Route 1, Box 34–A, Watonga, Oklahoma 73772.

Director, Haskell Service Unit, PHS Indian Health Center, 2415 Massachusetts Avenue, Lawrence, Kansas 66044.

Director, Lawton Service Unit, Lawton Indian Hospital, 1515 Lawrie Tatum Road, Lawton, Oklahoma 73501.

Director, Anadarko Indian Health Center, P.O. Box 828, Anadarko, Oklahoma 73005.

Director, Carnegie Indian Health Center, P.O. Box 1120, Carnegie, Oklahoma 73150.

Director, Holton Service Unit, PHS Indian Health Center, 100 West 6th Street, Holton, Kansas 66436.

Director, Pawnee Service Unit, Pawnee Indian Service Center, RR2, Box 1, Pawnee, Oklahoma 74058–9247.

Director, Pawhuska Indian Health Center, 715 Grandview, Pawhuska, Oklahoma 74056.

Director, Tahlequah Service Unit, W.W. Hastings Indian Hospital, 100 S. Bliss, Tahlequah, Oklahoma 74464.

Director, Wewoka Indian Health Center, P.O. Box 1475, Wewoka, Oklahoma 74884.

Director, Phoenix Area Indian Health Service, Two Renaissance Square, 40 North Central Avenue, Phoenix, Arizona 85004.

Director, Colorado River Service Unit, Chemehuevi Indian Health Clinic, P.O. Box 1858, Havasu Landing, California 92363.

Director, Colorado River Service Unit, Havasupai Indian Health Station, P.O. Box 129, Supai, Arizona 86435.

Director, Colorado River Service Unit, Parker Indian Health Center, 12033 Agency Road, Parker, Arizona 85344.

Director, Colorado River Service Unit, Peach Springs Indian Health Center, P.O. Box 190, Peach Springs, Arizona 86434.

Director, Colorado River Service Unit, Sherman Indian High School, 9010 Magnolia Avenue, Riverside, California 92503.

Director, Elko Service Unit, Newe Medical Clinic, 400 ''A'' Newe View, Ely, Nevada 89301.

Director, Elko Service Unit, Southern Bands Health Center, 515 Shoshone Circle, Elko, Nevada 89801.

Director, Fort Yuma Service Unit, Fort Yuma Indian Hospital, P.O. Box 1368, Fort Yuma, Arizona 85366.

Director, Keams Canyon Service Unit, Hopi Health Care Center, P.O. Box 4000, Polacca, Arizona 86042.

Director, Phoenix Service Unit, Phoenix Indian Medical Center, 4212 North 16th Street, Phoenix, Arizona 85016.

Director, Phoenix Service Unit, Salt River Health Center, 10005 East Osborn Road, Scottsdale, Arizona 85256.

Director, San Carlos Service Unit, Bylas Indian Health Center, P.O. Box 208, Bylas, Arizona 85550.

Director, San Carlos Service Unit, San Carlos Indian Hospital, P.O. Box 208, San Carlos, Arizona 85550.

Director, Schurz Service Unit, Schurz Service Unit Administration, Drawer A, Schurz, Nevada 89427.

Director, Fort McDermitt Clinic, P.O. Box 315, McDermitt, Nevada 89421.

Director, Unitah and Ouray Service Unit, Fort Duchesne Indian Health Center, P.O. Box 160, Ft. Duchesne, Utah 84026.

Director, Whiteriver Service Unit, Cibecue Health Center, P.O. Box 37, Cibecue, Arizona 85941.

Director, Whiteriver Service Unit, Whiteriver Indian Hospital, P.O. Box 860, Whiteriver, Arizona 85941.

Director, Desert Vision Youth Wellness Center/RTC, P.O. Box 458, Sacaton, Arizona 85247.

Director, Portland Area Indian Health Service, Room 476, Federal Building, 1220 Southwest Third Avenue, Portland, Oregon 97204–2829.

Director, Colville Service Unit, Colville Indian Health Center, P.O. Box 71-Agency Campus, Nespelem, Washington 99155.

Director, Fort Hall Service Unit, Not-Tsoo Gah-Nee Health Center, P.O. Box 717, Fort Hall, Idaho 83203.

Director, Neah Bay Service Unit, Sophie Trettevick Indian Health Center, P.O. Box 410, Neah Bay, Washington 98357.

Director, Warm Springs Service Unit, Warm Springs Indian Health Center, P.O. Box 1209, Warm Springs, Oregon 97761.

Director, Wellpinit Service Unit, David C. Wynecoop Memorial Clinic, P.O. Box 357, Wellpinit, Washington 99040.

Director, Western Oregon Service Unit, Chemawa Indian Health Center, 3750 Chemawa Road, NE., Salem, Oregon 97305–1198.

Director, Yakama Service Unit, Yakama Indian Health Center, 401 Buster Road, Toppenish, Washington 98948.

Director, Tucson Area Indian Health Service, 7900 South ''J'' Stock Road, Tucson, Arizona 85746–9352.

Director, Pascua Yaqui Service Unit, Division of Public Health, 7900 South ''J'' Stock Road, Tucson, Arizona 85746.

Director, San Xavier Indian Health Center, 7900 South ''J'' Stock Road, Tucson, Arizona 85746.

Director, Sells Service Unit, Santa Rosa Indian Health Center, HCO1, Box 8700, Sells, Arizona 85634.

Director, Sells Service Unit, Sells Indian Hospital, P.O. Box 548, Sells, Arizona 85634.

Director, Sells Service Unit, West Side Health Station, P.O. Box 548, Sells, Arizona 85634.

Appendix 2—Federal Archives and Records Centers

District of Columbia, Maryland Except U.S. Court Records for Maryland, Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20746–8001.

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, Federal Archives and Records Center, Frederick C. Murphy Federal Center, 380 Trapelo Road, Waltham, Massachusetts 02452–6399.

Northeast Region, Federal Archives and Records Center, 10 Conte Drive, Pittsfield, Massachusetts 01201–8230.

Mid-Atlantic Region and Pennsylvania, Federal Archives and Records Center, 14700 Townsend Road, Philadelphia, Pennsylvania 19154–1096.

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, Federal Archives and Records Center, 1557 St. Joseph Avenue, East Point, Georgia 30344–2593.

Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin and U.S. Court Records for the mentioned States, Federal Archives and Records Center, 7358 South Pulaski Road, Chicago, Illinois 60629–5898.

Michigan, Except U.S. Court Records, Federal Records Center, 3150 Springboro Road, Dayton, Ohio 45439–1883.

Kansas, Iowa, Missouri and Nebraska, and U.S. Court Records for the mentioned States, Federal Archives and Records Center, 2312 East Bannister Road, Kansas City, Missouri 64131–3011.

New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands, and U.S. Court Records for the mentioned States and territories, 200 Space Center Drive, Lee's Summit, Missouri 64064–1182.

Arkansas, Louisiana, Oklahoma and Texas, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, P.O. Box 6216, Ft. Worth, Texas 76115–0216.

Colorado, Wyoming, Utah, Montana, New Mexico, North Dakota, and South Dakota, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, P.O. Box 25307, Denver, Colorado 80225–0307.

Northern California Except Southern California, Hawaii, and Nevada Except Clark County, the Pacific Trust Territories, and American Samoa, and U.S. Courts Records for the mentioned States and territories, Federal Archives and Records Center, 1000 Commodore Drive, San Bruno, California 94066–2350.

Arizona, Southern California, and Clark County, Nevada, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, 23123 Cajalco Road, Perris, California 93570–7298.

Washington, Oregon, Idaho and Alaska, and U.S. Courts Records for the mentioned States, Federal Archives and Records Center, 6125 Sand Point Way NE, Seattle, Washington 98115–7999.

Dated: December 22, 2005.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 05–24644 Filed 12–29–05; 8:45 am]

BILLING CODE 4165–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Single Ribozyme To Catalyze Both Trimming and Transacting Catalysis—Potential Therapeutic for HPV Infection and Cervical Cancer

Joseph A. DiPaolo (NCI) *et al.,*

U.S. Provisional Application No. 60/675,076 filed 25 April 2005 (HHS Reference No. E–142–2005/0–US–01),

Licensing Contact: Robert M. Joynes; 301/594–6565; *joynesr@mail.nih.gov.*

This technology relates to a potential therapeutic for treating human papillomavirus (HPV) infection as well as cervical cancer. It is acknowledged that HPV is the primary agent associated with cervical cancer. The life cycle of HPVs progresses with epithelial differentiation and may persist for decades. The E6 and E7 oncogenes are responsible for two viral proteins that target p53 and Rb. The persistence of E6 and E7 in cervical carcinomas has led to them being recognized as the hallmark of cervical carcinomas and makes them excellent targets for therapy. Previously, we reported an engineered hairpin ribozyme (R434) that caused down-regulation of HPV–16 E6/E7 mRNA and inhibited growth of both HPV–16 immortalized cells and tumor cells. To increase efficiency of R434 we constructed a ribozyme expression

system (TRL–5) entirely based on cis-cleaving (trimming) hairpin ribozymes (triplex system) that release R434 from long transcripts. Because of the modular structure of the hairpin ribozyme, the catalytic domain B can independently recognize cis or trans targets allowing the use of the same ribozymes for both trimming and therapeutic duties. Thus, this improved system was designed as a three-ribozymes unit in a canonical triplex using an inverted cleavage from one trimming ribozyme.

The Rz434bis system was designed to use a single R434 ribozyme to catalyze both trimming and trans-acting activities. This procedure resulted in a reduced-size triplex system that uses R434 catalytic domain to self-excise itself. RNA from Rz434bis and TRL–5 templates released R434 by a self-processing mechanism thus allowing for the individual activity of multiple trans-acting ribozymes. Both Rz434bis and TRL–5 systems produced an increased cleavage efficiency of HPV–16 target site nt 410 to 445 when expressed from linear or circular templates. Furthermore, duplex Rz434bis and TRL–5 were more efficient in cleaving E6 than duplex single R434. The use of triplex configurations with multi-target ribozymes will ultimately result in better in vivo HPV–16 E6/E7 mRNA degradation. Therefore, implementation of the triplex systems that significantly enhance R434 in vitro activity is offered as an alternative to the antisense oligodeoxynucleotide treatment of cervical cancer.

Genomic Nucleic Acid Sequence for Cyanovirin-N and Signal Peptide Thereof

Dr. Angela Gronenborn (NIDDK),
U.S. Provisional Application No. 60/695,599 filed 05 Jul 2005 (HHS Reference No. E–133–2005/0–US–01),
Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov.*

The invention provides composition claims for an isolated or purified genomic nucleic acid sequence encoding a CV–N signal peptide, as well as an isolated or purified nucleic acid comprising a genomic sequence encoding a Cyanovirin-N (CV–N) polypeptide native to the cyanobacterium species *Nostoc ellipsosporum.* The signal peptide can be used for directing the secretion of CV–N polypeptide. Further development of the invention may yield novel therapies and methods in the prevention of HIV and other retroviruses, such as HTLV–1 and 2, FLV, and treatment of chronic infection in patients with resistance to current HIV therapies. The invention also includes vectors and cells comprising this sequence, methods for producing a polypeptide, and a method for inhibiting viral infection in a mammal by administering a viral-infection inhibiting amount of the nucleic acid, vector and/or cell of the invention. It also provides a method of inhibiting virus in biological samples or inanimate objects, and can also be used ex vivo for virucidal sterilization.

GP41 Inhibitor

G. Marius Clore *et al.* (NIDDK),
U.S. Provisional Application No. 60/339,751 filed 17 Dec 2001 (HHS Reference No. E–252–2001/0–US–01); PCT Application No. PCT/US02/40684 filed 17 Dec 2002 (HHS Reference No. E–252–2001/0–PCT–02); U.S. Patent Application No. 10/499,094 filed 14 Jun 2004 (HHS Reference No. E–252–2001/0–US–03),
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

The technology relates to a chimeric molecule, NCCG-gp41, in which the internal trimeric helical coiled-coil of the ectodomain of gp41 is fully exposed and stabilized by both fusion to a minimal ectodomain core of gp41 and by engineered intersubunit disulfide bonds. NCCG-gp41 inhibits HIV envelope mediated cell fusion at nanomolar concentrations with an IC50 of 16 nM. It is proposed that NCCG-gp41 targets the exposed C-terminal region of the gp41 ectodomain in its pre-hairpin intermediate state, thereby preventing the formation of the fusogenic form of the gp41 ectodomain that comprises a highly stable trimer of hairpins arranged in a six-helix bundle. NCCG-gp41 has potential as (a) an HIV therapeutic agent that inhibits cell entry; (b) as an AIDS vaccine and; (c) as a component of a high throughput screening assay for small molecule inhibitors of HIV envelope mediated cell fusion. Antibodies have been raised against NCCG-gp41 that inhibit HIV envelope mediated cell fusion.

This invention is further described in: J.M. Louis *et al.*, ''Design and properties of NCCG-gp41, a chimeric gp41 molecule with nanomolar HIV fusion inhibitory activity,'' J. Biol. Chem. (2001 Aug 3) 276(31):29485–29489; C.A. Bewley *et al.*, ''Design of a novel peptide inhibitor of HIV fusion that disrupts the internal trimeric coiled-coil of gp41,'' J. Biol. Chem. (2002 Apr 19) 277(16):14238–14245; J.M. Louis *et al.*, ''Covalent trimers of the internal N-terminal trimeric coiled-coil of gp41 and antibodies directed against them are potent inhibitors of HIV envelope-mediated cell fusion,'' J. Biol. Chem. (2003 May 30) 278(22):20278–20285; J.M. Louis *et al.*, ''Characterization and HIV–1 fusion inhibitory properties of monoclonal Fabs obtained from a human non-immune phage library selected against diverse epitopes of the ectodomain of HIV–1 gp41,'' J. Mol. Biol. (2005 Nov 11) 353(5):945–951.

Dated: December 19, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–8121 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Molecular Cloning and Characterization of SNAPIN: A Synaptic Vesicle Protein Implicated in Neurotransmitter

Dr. Zu-hang Sheng *et al.* (NINDS),
HHS Reference No. E–182–1999/0—Research Tool,
Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Neurotransmitter release is dependent on a binding complex (designated as SNAR) of three proteins, synaptic-vesicle-associated protein synaptobrevin/VAMP, syntaxin and SNAP–25 (snaptosome-associated protein-25) with results in a calcium

dependent fusion between synaptic vesicles and the presynaptic terminal. SNAPIN, a neuron specific protein found predominately on synaptic vesicles, binds to the SNAR complex, most likely to the SNAP–25. Although the complete function of SNAPIN has not been determined, it appears to regulate a step between vesicle docketing and neurotransmitter release through its ability to potentiate the interaction of synaptotagmin with the SNAREs, which then leads to the final fusion step triggered by calcium influx into nerve terminals through voltage-dependent calcium channels.

A Mouse With a Targeted Mutation in the Uncoupling Protein-3 (upc3) Gene

Dr. Marc Reitman *et al.* (NIDDK),

HHS Reference No. E–031–1999/0—Research Tool,

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

The NIH announces the development of a transgenic mouse with a targeted mutation in the ucp3 gene. The ucp3 gene is implicated I the function of regulating energy metabolism. This regulatory function is thought to be accomplished by changing metabolic efficiency (causing energy expended as heat rather than used for ADP/ATP conversion) and/or by participating in fat metabolism. The mutation should inactivate the ucp3 function and the mouse provided a testing vehicle for the above hypotheses.

If in fact ucp3 is involved in energy efficiency and/or fat metabolism, then variation in its sequence or level of expression may explain some of human obesity. If ucp3 is involved in fever generation, it would be of interest in testing inactivating drugs.

In summary, this mouse model provides a model for evaluating the role of ucp3 in obesity, energy efficiency, and selective use of energy sources (i.e., fat vs. carbohydrates), body temperature regulation, such as fever, or other forms of stimulated thermogenesis (e.g., by diet of dietary fat). For example, a drug candidate thought to act via ucp3 should have no effect in these mice.

Dated: December 19, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–8122 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Molecular Oncology 2.

Date: February 21–22, 2006.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel and Conference Ctr., 5700 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8133, Bethesda, MD 20892, 301–594–1224.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 22, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24651 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Clinical Science.

Date: February 13–14, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeanette M Hosseini, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd, Suite 401, Bethesda, MD 20892. (301) 594–9096.

Dated: December 20, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24662 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the

discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: January 19–20, 2006.

Open: January 19, 2006, 8:30 a.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: Madison Hotel, 15th & M Street, NW., Washington, DC 20005.

Closed: January 20, 2006, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Madison Hotel, 15th & M Street, NW., Washington, DC 20005.

Contact Person: Lore Anne McNicol, PhD, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892. (301) 451–2020.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: December 22, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24657 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 1–2, 2006.

Closed: February 1, 2006, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Fishers Building Conference Center, Fishers Lane Building, 5635 Fishers Lane, Terrace Level, Rockville, MD 20832.

Closed: February 2, 2006, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate the Board of Scientific Counselor's Report.

Place: Fishers Building Conference Center, Fishers Lane Building, 5635 Fishers Lane, Terrace Level, Rockville, MD 20832.

Open: February 2, 2006, 9:30 a.m. to 2:30 p.m.

Agenda: Program reports and presentations.

Place: Fishers Building Conference Center, Fishers Lane Building, 5635 Fishers Lane, Terrace Level, Rockville, MD 20832.

Contact Person: Karen P. Peterson, PhD, Executive Secretary NIAAA Council, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 19, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24650 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Dissemination of an Evidence-Based Drug Prevention Program for High School Health Providers.

Date: January 11, 2006.

Time: 9:30 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Training and Infrastructure Development for Community Coalitions.

Date: January 18, 2006.

Time: 9:30 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientists Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 22, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24652 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: January 31–February 1, 2006.

Closed: January 31, 2006, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Open: February 1, 2006, 8 a.m. to 2:15 p.m.

Agenda: Call to Order; Task Force on Minority Aging Research report; Working Group on Program report; and Program Highlights.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: February 1, 2006, 2:15 p.m. to 2:45 p.m.

Agenda: To review and evaluate program documents.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute of Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernement employees. Person without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 22, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24656 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 26–27, 2006.

Closed: January 26, 2006, 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20802.

Open: January 26, 2006, 10 a.m. to 3 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20802.

Closed: January 26, 2006, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20802.

Closed: January 27, 2006, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 9000 Rockville Pike, Bethesda, MD 20802.

Contact: Ann A. Hagan, PhD, Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H MSC6200, Bethesda, MD 20892–6200. (301) 594–4499. *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-governmental employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and

any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 22, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24660 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Services Research Review Committee.

Date: February 14–15, 2006.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: February 14–15, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institute of Health, HHS)

Dated: December 22, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24661 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Research Program Projects (P01s).

Date: January 24, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call.)

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709. 919/541–1446. *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 20, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24663 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 23–24, 2006.

Open: February 23, 2006, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 23, 2006, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: February 24, 2006, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894, 301–496–6217, *Sheldon_Kotzin@nlm.nih.gov*.

Any interested person may file written comments with the Committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 19, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 05–24649 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular Development.

Date: January 3, 2006.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892. (301) 435–1214. *pinkus@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; High Performance Computing Infrastructure.

Date: January 27, 2006.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marc Rigas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892. (301) 402–1074. *rigasm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24658 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Treatment of Cardiovascular Conditions With Nitrite Therapy

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive license to practice the invention embodied in PCT patent applications PCT/US2004/21985 and PCT/US2004/22232, filed July 9, 2004, both entitled ''Use of Nitrite Salts for the Treatment of Cardiovascular Conditions'' [HHS Reference Number: E–254–2003/2–3–PCT–01], to Hope Medical Enterprises, Inc., dba Hope Pharmaceuticals™, an Arizona S-Corporation having a principle place of business in Scottsdale, Arizona. The field of use may be limited to the use of nitrite salts for the treatment of cerebral vasospasm following subarachnoid hemorrhage and/or cardiovascular conditions. The United States of America is an assignee of the patent rights in these inventions.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before February 28, 2006 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Carson, D.Phil., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *carsonsu@od.nih.gov*; Telephone: (301) 435–5020; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: A wide variety of disease indications, including cardiovascular and respiratory diseases, have been treated by different therapeutic classes of compounds that are able to increase blood flow and act as vasodilators. The core invention is the unexpected finding that low, physiological and non-toxic concentrations of sodium nitrite are able to increase blood flow and produce vasodilation by infused and nebulized routes of administration. Proof of concept data has been obtained in animal models for (1) myocardial and hepatic ischemia and reperfusion injury [J. Clin. Invest. (2005) 115, 1232–1240], (2) neonatal pulmonary hypertension in a neonate lamb model [Nature Medicine (2004) 10, 1122–1127] and (3) control of delayed cerebral vasospasm following subarachnoid hemorrhage in a primate model [JAMA (2005) 293, 1477–1484]. The implications of these results point to the use of nitrite as a potential cost-effective platform therapy for a wide variety of disease indications characterized broadly by constricted blood flow or hypoxia. Method of use claims for nitrite salt formulations are directed to conditions associated with high blood pressure, decreased blood flow or hemolytic disease and for the treatment of specific conditions such as pulmonary hypertension, cerebral artery vasospasm and hepatic, cardiac or brain ischemia-reperfusion injury.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 22, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–8139 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Software for Predicting Molecular Properties and Pathogen Detection

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in E–169–2000/0 ''Drift Compensation Method for Fingerprint Spectra,'' U.S. Patent Application No. 09/975,530 filed October 10, 2001; E–297–2001/0 ''Methods For Predicting Properties of Molecules,'' U.S. Patent Application No. 10/383,602 filed March 7, 2003; and E–017–2003/0 ''Improved Pattern Recognition Of Whole Cell Mass Spectra Via Separation Of Specific Charge States,'' U.S. Patent Application No. 10/863,745 filed June 7, 2004; to Litmus, LLC an Arkansas corporation having its headquarters in Little Rock, Arkansas. The United States of America is the assignee of the patent rights of the above inventions.

The contemplated exclusive license may be granted in the field of providing software solutions for pathogen detection and for predicting molecular properties.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before February 28, 2006 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovm@mail.nih.gov.* A signed confidentiality nondisclosure agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patent applications intended for licensure disclose and/or cover the following:

E–297–2001 ''Methods For Predicting Properties of Molecules'' Quantitative Spectral data-activity relationships (QSDAR)

The invention relates to methods for predicting the biological, chemical, and physical properties of molecules from their chemical shift through bond and through spatial distance connectivity patterns. This invention is related to E–209–1999 (related to the SDAR patent that could use chemical shift through bond correlated data); however, here predicted NMR chemical shift data is used that has already been *structurally assigned.* The invention uses the carbon or other heteronuclear molecular skeleton atom to atom connectivity of the molecule instead of proton to proton or proton to carbon connectivity that can be obtained from NMR experimental spectra of unlabeled molecules. This allows a model to be built using a complete molecular connectivity pattern instead of a pattern developed from a set of individual 2 or 3 atom pieces of a molecule. A 2D through bond connectivity spectrum is produced with a cross peak bin ''hit'' occurring when there is an atom to atom bond connection. Only half of the spectrum is used because the spectrum is symmetrical. A 2D through space connectivity spectrum is simulated is produced with a cross peak bin ''hit'' occurring when there is a atom to atom distance *r* is within a certain specified range.

The through bond and through space spectra can be reduced to principal components. The biological, chemical, and physical endpoints are added to the connectivity patterns and multiple linear regression (OVILS) or artificial neural networks (ANN) methods are applied to produce and validate the model. This provides a very rapid, reliable ability to model many different compounds. The model uses the structurally assigned chemical shifts from predicted NMR spectra. The through bond and through space connectivity patterns uses the structural assignment of the chemical shifts. The through bond connectivity pattern gives a local description of the atoms and the through space connectivity pattern gives a non-local description of the atoms. The combination of the through bond and through space molecular connectivity pattern provides a very precise pattern that can be used by pattern recognition software to produce a model. All parts of this model can be completely computerized. The ideas used in this model may be able to produce the highest cross-validated models of ''endpoints'' that are important to the public health service.

E–169–2000 ''Microbial Identification Databases''

The invention is a method for, based on an assembled coherent database, containing an essentially unlimited number of pyrolysis mass spectra to enable rapid chemotaxonomy of unknown microbial samples. The invention corrects for short- and long-term drift of microbial pyrolysis mass spectra by using spectra of similar microbes as internal standards. The invention provides a way to assemble a coherent database containing an essentially unlimited number of pyrolysis mass spectra or other instrumental ''fingerprints,'' where one or more is representative of each relevant strain, and representative of additional strains as they are added to the pool of microbial agents. Microorganisms can be identified using the invention from their fingerprint spectra regardless of the growth medium used to culture the bacteria. This is a result of the discovery that corrections made to the fingerprint spectrum of one type of bacterium to compensate for changes in growth medium may be applied successfully to metabolically similar bacteria. Fingerprint spectra to which the method of the invention may be applied include pyrolysis MALDI or other types of mass spectra, infrared spectra, chromatograms, NMR spectra and ion-mobility spectra. The present invention is especially useful for the rapid identification of microorganisms, including human pathogens.

E–017–2003 ''Pattern Recognition of Whole Cell Mass Spectra''

This invention analyzes mass spectra (MALDI, SELDI) from a plurality of microorganism sources and biological agents. The invention is useful for diagnosing disease, anticipating epidemic outbreaks, monitoring food supplies for contamination, regulating bio-processing operations, and is especially useful for detecting agents of war. The invention dramatically improves spectral analysis through deconvolution of complex spectra by collapsing multiple peaks showing different molecular mass originating from the same molecular fragment into a single peak. The differences in molecular mass are apparent differences caused by different charge states of the fragment and/or different metal ion adducts of one or more of the charge states. The deconvoluted spectrum is compared to a library of mass spectra acquired from samples of known identity to unambiguously determine the identity of one or more components of the sample undergoing analysis.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 14, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–8133 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Implants for Sustained Ocular Therapeutic Agent Delivery

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in E–241–1999/0, ''Ocular Therapeutic Agent Delivery Devices And Methods For Making And Using Such Devices;'' U.S. Patent 6,713,081 issued March 30, 2004 and expires March 15, 2021; U.S. Patent Application 10/471,468 filed September 12, 2004; and European Patent Application 02723446.7 filed March 14, 2002; to Lux Biosciences, a Delaware corporation having a principle place of business in Jersey City, New Jersey. The United States of America is the assignee of the patent rights of the above inventions.

The contemplated exclusive license may be granted in the field of ocular cyclosporine A delivery for the treatment of graft-versus-host-disease-associated dry eye and Sjögren's Syndrome.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before February 28, 2006 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovm@mail.nih.gov*. A signed confidentiality nondisclosure agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patent applications intended for licensure disclose and/or cover the following: E–241–1999/0, ''Ocular Therapeutic Agent Delivery Devices And Methods For Making And Using Such Devices.'' The invention is a method and apparatus for delivering a precisely controlled amount of drug to the eye on a sustained basis using an implantable polymer cylinder containing a drug pellet. In this method, the thickness of the polymer around the drug pellet is precisely controlled to provide a predictable release rate of the drug to the eye. Drug pellets made using a modified press are placed in a teflon tube having a silicone base, the top of the tube is filled with wet silicone and the pellet is spun down and centered in the teflon tubing. The teflon tubing is removed and the top and bottom ends of the silicone cylinder surrounding the pellet are trimmed. Thus, an annulus of uniform thickness surrounds the drug pellet, resulting in a uniform and predictable release rate. The invention also comprises a method, apparatus and implant design developed for surgical subconjunctival implantation to deliver an initial bolus of drug to the eye compartments followed by slow release of drug from the polymer matrix of the implant. A pellet of drug (e.g., cyclosporine) is imbedded between two saucer or disk shaped polyvinyl alcohol (PVA) components, forming a ''wafer'' shaped implant. The drug is also mixed into the matrix of the PVA itself at a nominal 10% concentration. Soon after implantation, a high level of drug is delivered to the eye for the first month and, thereafter, the embedded pellet sustains a continuous release of the drug.

The invention has also been described along with preclinical data in a recent publication by Kim *et al.* (2005) IOVS 46(2):655–662, ''Preclinical Evaluation of a Novel Episcleral Cyclosporine Implant for Ocular Graft-Versus-Host Disease.''

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 21, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–8120 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Fusion Proteins Comprising Circularly Permuted Ligands

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in United States Patent No. 4,892,827, issued on January 9, 1990, entitled ''Recombinant Pseudomonas Exotoxin: Construction Of An Active Immunotoxin With Low Side Effects'' [E–385–1986/0–US–01]; U.S. Patent No. 5,635,599, issued on June 3, 1997, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–US–01]; PCT Patent Application No. PCT/US95/04468, filed April 6, 1995, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–PCT–02]; Switzerland Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–CH–03]; Spain Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–ES–04]; United Kingdom Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–GB–05]; Italy Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–IT–06]; Luxembourg Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–LU–07]; Netherlands Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–NL–09]; German Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–DE–10]; Austria Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–AT–11]; Australia Patent No. 694211, issued on November 5, 1998, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–AU–12]; Belgium Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–BE–13]; Canada Patent No. 2187283, filed on April 6, 1995, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–CA–14]; European Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–EP–15]; France Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–FR–16]; Ireland Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–IE–17]; Liechtenstein Patent No. 0754192, issued on January 29, 2003, entitled ''Fusion Proteins Comprising Circularly Permuted Ligands'' [E–047–1994/0–LI–18]; and U.S. Patent No. 6,011,002, issued on January 4, 2000, entitled ''Circularly Permutated Ligands And Circularly Permuted Chimeric Molecules'' [E–047–1994/1–US–01] to Protox Therapeutics, Inc., which has offices in Vancouver, British Columbia, Canada. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the use of Interleukin-4/cytotoxin fusion proteins for the treatment of cancer.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before February 28, 2006 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jesse S. Kindra, J.D., M.S., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5559; Facsimile: (301) 402–0220; E-mail: *kindraj@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology relates to circularly permuted ligands having the ability to change the conformation of certain proteins so that they can be more effectively used as therapeutics. Specifically, growth factors such as IL–4 can be used in fusion proteins to target cell surface receptors. Accordingly, these growth factors can be used, when linked with cytotoxic moieties (i.e., Pseudomonas Exotoxin), to target and then kill desired cells. These circularly permuted molecules are advantageous over prior molecules in that they allow greater binding specificity of an immunotoxin to the targeted cell. This change in conformation is a result of the production of new carboxyl and amino termini. The new termini are located away from the active binding site and hence cause less steric hindrance between the active site and the fused protein. Hence, the targeting moiety is closer to its native conformation. Without such a conformational change, binding specificity for the immunotoxin is greatly reduced. Therefore, these circularly permuted molecules allow for greater binding specificity without retarding the cytotoxicity of the toxin to which they are bound.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 14, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–8131 Filed 12–29–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Federal Assistance for Offsite Radiological Emergency.

OMB Number: 1660–0024.

Abstract: In accordance with Executive Order 12657, FEMA [1] will need certain information from the licensee in order to form a decision as to whether or not a condition of ''decline or fail'' exists on the part of State or local governments (44 CFR 352.3–4). This information will be collected by the appropriate FEMA Regional Office or Headquarters. Also in accordance with the Executive Order, when a licensee requests Federal facilities or resources, FEMA will need information from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47 (c)(1) and 44 CFR 352.5. This information will be collected by the NRC and will be provided to FEMA through consultation between the two agencies.

Affected Public: Business or Other For Profit (Nuclear Regulatory Commission licensees of commercial nuclear power plants).

Number of Respondents: 1.

Estimated Time per Respondent: 160 hours.

Estimated Total Annual Burden Hours: 160 hours.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: December 23, 2005.

Darcy Bingham,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. E5–8138 Filed 12–29–05; 8:45 am]

BILLING CODE 9110–21–P

[1] The Radiological Emergency Preparedness Program is currently being transferred to the newly created Preparedness Directorate of the Department of Homeland Security. During this transition FEMA, also part of the Department of Homeland Security, will continue to support this program as the new Directorate stands up. Ultimately this data collection will be transferred to the Preparedness Directorate.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–66]

Notice of Submission of Proposed Information Collection to OMB; Housing Counseling Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information allows HUD to contract with organizations that provide tenant and Homeowner counseling. Counseling aids tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. HUD-approved agencies can compete for program funds.

DATES: *Comments Due Date:* January 30, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0261) and should be sent to: HUD Desk Officer, Officer of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission for responses.

This notice also lists the following information:

Title of Proposal: Housing Counseling Program.

OMB Approval Number: 2502–0261.

Form Numbers: HUD–9900, HUD–424–CB, HUD–424–CBW, HUD–27300, HUD–2880, HUD–2990, HUD–2991, HUD–2994, HUD–96010, HUD–9902, HUD–9908, HUD–9910.

Description of the Need for the Information and its Proposed Use: Information allows HUD to contract with organizations that provide tenants and homeowner counseling. Counseling aids tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. HUD-approved agencies can compete for program funds.

Frequency of Submission: On occasion, Monthly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	11,956	1.80	....	1.355	....	29,195

Total Estimated Burden Hours: 29,195.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 21, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 05–24655 Filed 12–29–05; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–52]

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.

EFFECTIVE DATE: December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., 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 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homless* 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: December 22, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–24577 Filed 12–29–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 this notice announces that the Bureau of Indian Affairs is seeking to extend clearance for an information collection request. The information collection, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112. Interested parties are invited to comment on this collection.

DATES: Written comments must be submitted on or before February 28, 2006.

ADDRESSES: Written comments may be sent to Chet Eagleman, Office of Tribal Services, Bureau of Indian Affairs, Department of Interior, 1951 Constitution Avenue, Mail Stop Room 320–SIB, Washington, DC 20240, or fax to (202) 208–2648.

FOR FURTHER INFORMATION CONTACT: Interested persons can obtain additional information regarding collection requests with no additional charge by contacting Chet Eagleman, 202–513–7640.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The Bureau of Indian Affairs (BIA) invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(b) The accuracy of the BIA's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 355B–SIB, during the hours of 8 a.m. to 4:30 p.m., EST, Monday through Friday, except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

III. Data

OMB Control Number: 1076–0112.

Type of review: Renewal.

Title: 25 CFR 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings.

Brief Description of: The collection of information will ensure that the provisions of Public Law 95–608 are met.

Respondents: Federally-recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

Number of Respondents: 2.

Estimated time per application: 8 hours.

Frequency of Response: Annually.

Total Annual Burden Hours: 16 hours.

Total Annual Cost to Respondents: 0.

Dated: December 22, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–8109 Filed 12–29–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PI–020H; G5–0034]

Notice of Call for Nominations for the Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Call for nominations.

SUMMARY: The Bureau of Land Management is publishing this notice under section 9 (a)(2) of the Federal Advisory Committee Act. Pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399), the Bureau of Land Management gives notice that the Secretary of the Interior intends to call for nominations for vacating positions to the Steens Mountain Advisory Council. This notice requests the public to submit nominations for membership on the Steens Mountain Advisory Council.

Any individual or organization may nominate one or more persons to serve on the Steens Mountain Advisory Council. Individuals may nominate themselves or others for Steens Mountain Advisory Council membership. Nomination forms may be obtained from the Bureau of Land Management Burns District Office (see address below). To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Bureau of Land Management Burns District Office. Nominations may be made for the following categories of interest:

- One person who is a recognized environmental representative for the State as a whole (appointed from nominees submitted by the Governor of Oregon);
- A person interested in fish and recreational fishing (appointed from nominees submitted by the Governor of Oregon);
- A person who is a recreational permit holder or is a representative of a commercial recreation operation (appointed jointly by the Oregon State Director of the Bureau of Land Management and the county court for Harney County, Oregon);
- A private landowner in the Cooperative Management and Protection Area (appointed by the county court for Harney County, Oregon); and
- A person with expertise and interest in wild horse management on Steens Mountain (appointed by the Bureau of Land Management)

The specific category the nominee will represent should be identified in the letter of nomination. The Bureau of Land Management Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, and the Bureau of Land Management). The Bureau of Land Management will then forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

DATES: Nominations should be submitted to the address listed below no later than 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4433, or *Rhonda_Karges@or.blm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Steens Mountain Advisory Council is to advise the Bureau of Land Management on the management of the Steens Mountain Cooperative Management and Protection Area as described in Title 1, Subtitle D of Public Law 106–399. Each member will be a person who, as a result of training and experience, has knowledge or special expertise that qualifies him or her to provide advice from among the categories of interest listed above.

Members of the Steens Mountain Advisory Council are appointed for terms of three years. The State environmental representative, recreational permit holder, private landowner, and fish and recreational fishing positions will expire August 2006. These four positions will begin no earlier than August 2006 and will end August 2009. The member of the Wild Horse Management position has resigned; therefore, the newly-appointed member will complete the existing three-year term. This term will begin upon appointment and will expire August 2008.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Steens Mountain Advisory Council shall meet only at the call of the Designated Federal Official, but not less than once per year.

Dated: December 23, 2005.

Dana Shuford,

Burns District Manager, Bureau of Land Management, Burns, Oregon.

[FR Doc. E5–8096 Filed 12–29–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–06–1040–PH–24–1A]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council (RAC) will meet January 26, 2006, from 8:30 a.m. until 4 p.m., in Provo, Utah.

ADDRESSES: On January 26, the RAC will meet in the Centennial Conference Room at the Marriott Courtyard Hotel (1600 N. Freedom Blvd.) in Provo, Utah.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: The Council will hold elections of officers, listen to a report from the RAC's Factory Butte Subgroup, be given an overview of ''What's Happening in Utah,'' and take part in a discussion on Senator Bennett's bill regarding OHV issues. A half-hour public comment period is scheduled to begin at 2:30 p.m. Written comments may be sent to the Bureau of Land Management address listed below. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: December 21, 2005.

James Kohler,

Acting State Director.

[FR Doc. E5–8074 Filed 12–29–05; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability and Public Hearings for the Red River Valley Water Supply Project Draft Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Pubic Hearings INT–DES–05–79.

SUMMARY: The Bureau of Reclamation (Reclamation) and the State of North Dakota, represented by the Garrison Diversion Conservancy District (Garrison Diversion), have as joint lead agencies prepared the Red River Valley Water Supply Project Draft Environmental Impact Statement (DEIS). The DEIS was prepared in cooperation with the cities of Fargo, West Fargo, and Grand Forks, North Dakota and Moorhead, Minnesota, the Lake Agassiz Water Authority, North Dakota State Historic Preservation Office, Minnesota Department of Natural Resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Geological Survey, U.S. Forest Service, and U.S. Environmental Protection Agency, and pursuant to section 8(c) of the Dakota Water Resources Act of 2000 (DWRA) and section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended.

The DEIS analyzes the environmental, cultural, and socioeconomic effects of eight alternatives. Seven alternatives would meet the water needs in the Red River Valley of North Dakota, and the cities of Breckenridge, Moorhead, and East Grand Forks in Minnesota, through 2050. The document also discloses the effects of no action, or the future without implementing the federal Red River Valley Water Supply Project.

DATES: A 60-day public review period commences with the publication of this notice. Written comments on the DEIS are due by February 28, 2006, and should be submitted to Reclamation at the address given below.

Public hearings will be held during February in North Dakota and Minnesota. See the Supplementary Information section for dates of the public hearings.

ADDRESSES: Written comments should be submitted to: Bureau of Reclamation, Attn: Signe Snortland, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502.

See **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Signe Snortland, Red River Valley Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck ND 58502; Telephone: (701) 250–4242 extension 3619; or Fax to (701) 250–4326. You may submit e-mail to *ssnortland@gp.usbr.gov* or access the Red River Valley Water Supply Project Web site at *http://www.rrvwsp.com.*

SUPPLEMENTARY INFORMATION:

Public Hearing Dates:

- Thursday, February 2, 2006, 7 p.m., Bismarck, North Dakota
- Tuesday, February 7, 2006, 7 p.m., Grand Forks, North Dakota
- Wednesday, February 8, 2006, 7 p.m., Warroad, Minnesota
- Thursday, February 9, 2006, 7 p.m., Valley City, North Dakota
- Wednesday, February 15, 2006, 7 p.m., Fargo, North Dakota
- Thursday, February 16, 2006, 7 p.m., Perham, Minnesota
- Friday, February 17, 2006, 1 p.m., Red Lake, Minnesota

Public Hearing Locations:

- Bismarck—Best Western Doublewood Inn, 1400 E. Interchange Avenue, Bismarck, North Dakota
- Grand Forks—Holiday Inn, 1210 N. 43rd Street, Grand Forks, North Dakota
- Warroad—Warroad Public School Theatre, 510 Cedar Avenue, Warroad, Minnesota
- Valley City—AmericInn, 280 Winter Show Road SE., Valley City, North Dakota
- Fargo—Ramada Plaza Suites and Conference Center, 1635 42nd Street, SW., Fargo, North Dakota
- Perham—Lakeside Golf Club, 2727 450th Street, Perham, Minnesota
- Red Lake—Red Lake Community Center, 15041 Great Nation Drive, Highway 1, Adjacent to the Seven Clans Casino, Red Lake, Minnesota

Public Review Locations

Copies of the DEIS are available for public review at the following locations:

Iowa

- Des Moines Public Library, 100 Locust Street, Des Moines, Iowa

Kansas

- Topeka and Shawnee County Public Library, 1515 SW. 10th Street, Topeka, Kansas

Minnesota

- Breckenridge Public Library, 205 7th Street North, Breckenridge, Minnesota
- East Grand Forks Public Library, 422 4th Street Northwest, East Grand Forks, Minnesota
- Moorhead Public Library, 118 5th Street South, Moorhead, Minnesota
- Perham Area Public Library, 225 2nd Avenue Northeast, Perham, Minnesota
- Red Lake Band of Chippewa Indians, PO Box 550, Red Lake, Minnesota
- St. Paul Public Library, 90 West 4th Street, St. Paul, Minnesota
- Warroad City Library, 202 Main Avenue Northwest, Warroad, Minnesota
- White Earth Reservation, 26246 Crane Road, White Earth, Minnesota

Missouri

- Kansas City Public Library, 14 West 10th Street, Kansas City, Missouri
- Missouri River Regional Library, 214 Adams Street, Jefferson City, Missouri

Montana

- Bureau of Reclamation, Great Plains Regional Office, 316 N. 26th Street, Billings, Montana

Nebraska

- Lincoln City Libraries, 136 South 14th Street, Lincoln, Nebraska

North Dakota

- Alfred Dickey Public Library, 105 3rd Street Southeast, Jamestown, North Dakota
- Bureau of Indian Affairs, Turtle Mountain Agency, PO Box 60, Belcourt/Highway 5 West, North Dakota
- Bureau of Indian Affairs, Fort Berthold Agency, 202 Main Street, New Town, North Dakota
- Bureau of Indian Affairs, Fort Totten Agency, PO Box 270/Main Street, Fort Totten, North Dakota
- Bureau of Reclamation, Dakotas Area Office, 304 E. Broadway Avenue, Bismarck, North Dakota
- Fargo Public Library, 102 3rd Street North, Fargo, North Dakota
- Garrison Diversion Conservancy District, 401 Highway 281 Northeast, Carrington, North Dakota
- Grand Forks Public Library, 2110 Library Circle, Grand Forks, North Dakota
- Leach Public Library, 417 2nd Avenue North, Wahpeton, North Dakota

- North Dakota State Library, 603 East Boulevard Avenue, Bismarck, North Dakota
- Standing Rock Administrative Service Center, Building #1, North Standing Rock Avenue, Fort Yates, North Dakota
- West Fargo Public Library, 109 3rd Street East, West Fargo, North Dakota

South Dakota

- Bureau of Indian Affairs, Sisseton Agency, Veterans Memorial D, Agency Village, South Dakota
- South Dakota State Library, 800 Governors Drive, Pierre, South Dakota

Province of Manitoba

- Millennium Library, 251 Donald Street, Winnipeg, Manitoba, Canada

Province of Ontario

- Kenora Branch Library, 24 Main Street South, Kenora, Ontario, Canada

Background

In 1944, the U.S. Congress passed the Flood Control Act (the Missouri-Basin Pick Sloan Act), which authorized the construction of dams on the Missouri River and its tributaries. The Garrison Diversion Unit (GDU) was authorized in 1965, and construction began in 1967. The project was designed to divert Missouri River water to central and eastern North Dakota for irrigation; fish and wildlife enhancement; municipal, rural, and industrial (MR&I) water supply; and recreation development. Most of the currently authorized principal supply works have been completed, except for about a 20-mile reach between the end of the McClusky Canal and beginning of the New Rockford Canal.

The project was reformulated in 1986 to reduce the emphasis on irrigation and increase the emphasis on meeting the MR&I water needs throughout North Dakota. The 1986 Reformulation Act authorized a Sheyenne River water supply and release feature and water treatment plant capable of delivering 100 cubic feet per second of water to eastern North Dakota.

The GDU authorization was amended again in December 2000 by DWRA. Among other things, DWRA states that, ''the Secretary of the Interior shall conduct a comprehensive study of the water quality and quantity needs of the Red River Valley in North Dakota and possible options for meeting those needs'' (Section 8(b)(1)). In addition, the DWRA states that, ''pursuant to an agreement between the Secretary and State of North Dakota as authorized under section 1(g) * * * the Secretary and the State of North Dakota shall jointly prepare and complete a draft environmental impact statement concerning all feasible options to meet the comprehensive water quality and quantity needs of the Red River Valley and the options for meeting those needs'' (Section 8(c)(2)(A)).

DWRA also states, ''the Secretary shall maintain the Snake Creek Pumping Plant, New Rockford Canal, and McClusky Canal features of the principal supply works. Subject to the provisions of section (8) of this Act, the Secretary shall select a preferred alternative to implement the Dakota Water Resources Act of 2000. In making this selection, one of the alternatives the Secretary shall consider is whether to connect the principal supply works in existence on the date of enactment'' [Section 5(a)(5)].

Purpose and Need for the Federal Action

The purpose of the action proposed in this DEIS is to meet the ''comprehensive water quality and quantity needs of the Red River Valley'' [DWRA Section 8(c)(2)(A)] through year 2050. The quality and quantity needs are defined by DWRA as MR&I supplies, water quality, aquatic environment, recreation, and water conservation measures [DWRA Section 8(b)(2)].

Alternatives

Eight alternatives are evaluated in the DEIS including three in-basin alternatives, four Missouri River import alternatives, and no action. All of the proposed pipelines in these alternatives would be buried. Reclamation has not identified a preferred alternative at this time. The Garrison Diversion Unit (GDU) Import to Sheyenne River Alternative is the State of North Dakota's preferred alternative. The alternatives are:

- *No Action Alternative.* This alternative represents the reasonably foreseeable future condition if the federal Red River Valley Water Supply Project is not constructed.
- *North Dakota In-Basin.* This in-basin alternative would use surface and groundwater sources primarily within the Red River Valley of North Dakota to meet shortages. The primary feature would capture flows in the Red River downstream of Grand Forks and would recirculate flows back to Lake Ashtabula via pipeline.
- *Red River Basin.* For this alternative, in-basin surface water and groundwater from the Red River Basin in Minnesota and North Dakota would be used to meet shortages. The primary feature would be a new well field and pipeline network in Otter Tail County, Minnesota.
- *Lake of the Woods.* This in-basin alternative would transport water via pipeline from Lake of the Woods, Minnesota, to the Red River Valley, and also use water sources in North Dakota to meet water shortages.
- *GDU Import to Sheyenne River.* This import alternative would meet water shortages by transporting Missouri River water through the GDU Principal Supply Works to the Sheyenne River via pipeline. Water would be treated at the end of the McClusky Canal using coagulation, flocculation, sedimentation and ultraviolet disinfection. Water would be further treated to SDWA (Safe Drinking Water Act) standards at treatment plants in the Red River Valley. The Sheyenne and Red Rivers would be used to convey water further in the basin. The Principal Supply Works include the Snake Creek Pumping Plant on Lake Sakakawea, Audubon Lake, and McClusky Canal.
- *GDU Import Pipeline.* This import alternative would use the GDU Principal Supply Works and a pipeline system to convey treated Missouri River water directly to the local water systems in the Red River Valley to meet water shortages. Water would be treated at the end of the McClusky Canal using coagulation, flocculation, sedimentation and ultraviolet disinfection. Water would be further treated to SDWA standards at treatment plants in the Red River Valley.
- *Missouri River Import to Red River Valley.* This import alternative would use a pipeline from the Missouri River south of Bismarck, North Dakota, to import treated water to Fargo, Grand Forks, and Lake Ashtabula. Water would be treated at the source using coagulation, flocculation, sedimentation and ultraviolet disinfection. Water would be further treated to SDWA standards at treatment plants in the Red River Valley. Water delivered to Lake Ashtabula in off peak times would be stored for later release to downstream users to meet water shortages.
- *GDU Water Supply Replacement Pipeline.* This import alternative would use the GDU Principal Supply Works and pipelines to replace existing MR&I water supplies in the service area with potable, imported Missouri River water. Water would be treated to SDWA standards at the source.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Our practice is to make comments,

including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 21, 2005.

Donald E. Moomaw,

Assistant Regional Director, Great Plains Region.

[FR Doc. 05–24646 Filed 12–29–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 22, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**, the OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: The 13 Carcinogens Standard (29 CFR 1910.1003, 1915.1003, and 1926.1103).

OMB Number: 1218–0085.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 97.

Number of Annual Responses: 2,187.

Estimated Time Per Response: Time per response ranges from approximately 5 minutes (for employers to maintain records) to 2 hours for employees to receive a medical examination.

Total Burden Hours: 1,657.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $86,227.

Description: The information collection requirements specified in the 13 Carcinogens Standard protect employees from the adverse health effects that may result from exposure to any of the 13 carcinogens. The major information collection requirements of the 13 Carcinogens Standard include: Establishing and implementing respiratory protection and medical surveillance programs for employees assigned to or being considered for assignment to regulated areas; maintaining complete and accurate records of the respiratory protection programs and medical surveillance; providing employees with records of all medical examination results; and posting warning signs and information. In addition, employers must retain employee medical records for specified time periods, provide these records to OSHA and the National Institute for Occupational Safety and Health (NIOSH) upon request, and transfer them to NIOSH under certain circumstances.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–24648 Filed 12–29–05; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises MSHA's Approval and Certification Center (A&CC) user fees for services provided pursuant to part 5 of Title 30 of the Code of Federal Regulations (CFR) during 2006. Fees compensate MSHA for the costs that the agency incurs for testing and evaluating equipment and materials manufactured for use in the mining industry. The fees for 2006 are based on the Agency's fiscal year 2005 actual expenses.

DATES: This fee schedule is effective from January 1, 2006 through December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center (A&CC), 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

Fee Computation

MSHA has revised its fee schedule for 2006 in accordance with part 5 of 30 CFR, which was amended by a direct final rule published in the **Federal Register** (70 FR 46336) on August 9, 2005. For approval applications postmarked before January 1, 2006, MSHA will continue to calculate fees under the previous (2005) fee schedule, published on December 29, 2004 (69 FR 78046).

In general, MSHA computed the 2006 fees based on fiscal year 2005 data. The Agency calculated a weighted-average, direct cost for all of the services that it provided during fiscal year 2005 in the processing of requests for testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry. From this cost, MSHA calculated a single hourly rate to apply uniformly.

Changes to Fee Assessments for 2006

On November 7, 2005, MSHA's direct final rule became effective (70 FR 67632). This final rule amended part 5

to reflect established policy and procedures for administering user fees. In addition, the final rule advised the public that the fees relating to part 15 testing of explosives would be modified. In recent years, MSHA has relied on the Department of Health and Human Services' National Institute for Occupational Safety and Health (NIOSH) to conduct part 15 testing on its behalf. Since NIOSH no longer has the facilities to conduct all of the part 15 tests, the tests will be contracted out to other organizations. For additional information regarding part 15 testing, please contact Steven J. Luzik, Chief, Approval and Certification Center, 304–547–2029 or 304–547–0400.

Dated: December 28, 2005.

Robert M. Friend,

Acting Deputy Assistant Secretary for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 2006

[Based on FY 2005 data]

Action title	Hourly rate
Fees for Testing, Evaluation, Approval and Retesting for Approval as a Result of Post-Approval Product Audit of all Mining Products [1]	$71

[1] Full approval fee consists of evaluation cost plus applicable test costs.

Note: When the nature of the product requires that MSHA test and evaluate the product at a location other than on MSHA premises, MSHA must be reimbursed for the travel, subsistence, and incidental expenses of its representative in accordance with Federal government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 05–24691 Filed 12–29–05; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, 50–287, and 72–004]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 and 72.50 approving the indirect transfer of Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55 and NRC Materials License No. SNM–2503 for the Oconee Nuclear Station, Units 1, 2, and 3, currently held by Duke Energy Corporation, as owner and licensed operator of Oconee Nuclear Station, Units 1, 2, and 3. The indirect transfer would be to a new holding company to be named Duke Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed change of the name of the licensee from Duke Energy Corporation to Duke Power Company LLC.

According to an application for approval filed by Duke Energy Corporation, following approval of the proposed indirect license transfers, a new holding company would be created to become the parent of the licensee. No physical changes to the Oconee Nuclear Station, Units 1, 2, and 3, facility or ISFSI or operational changes are being proposed in the application.

The proposed amendments would reflect the proposed change in the name of the licensee from Duke Energy Corporation to Duke Power Company LLC, following the licensee's conversion from a corporation to a limited liability company. Although the Part 50 licenses contain antitrust conditions, there are no proposed changes to these conditions.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed underlying transaction resulting in the indirect transfer will not affect the qualifications of the holder of the license, and that the indirect transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an independent spent fuel storage installation which does no more than conform the license to reflect the indirect transfer action involves no significant hazards consideration or no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Timika Shafeek-Horton, Assistant General Counsel, Duke Energy Law Department, Mail Code EC07H–7109, P.O. Box 1006, 526 South Church St., Charlotte, NC 28201–1006, (704) 382–6373, (704) 382–6056 fax; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing

request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the indirect license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated August 5, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of December 2005.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–8141 Filed 12–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; McGuire Nuclear Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. NPF–9 and NPF–17 for the McGuire Nuclear Station, Units 1 and 2, currently held by Duke Energy Corporation, as owner and licensed operator of McGuire Nuclear Station, Units 1 and 2. The indirect transfer would be to a new holding company to be named Duke Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed change of the name of the licensee from Duke Energy Corporation to Duke Power Company LLC.

According to an application for approval filed by Duke Energy Corporation, following approval of the proposed indirect license transfers, a new holding company would be created to become the parent of the licensee. No physical changes to the McGuire Nuclear Station, Units 1 and 2, facility or operational changes are being proposed in the application.

The proposed amendments would reflect the proposed change in the name of the licensee from Duke Energy Corporation to Duke Power Company LLC, following the licensee's conversion from a corporation to a limited liability company. Although the licenses contain antitrust license conditions, there are no proposed changes to these conditions.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed underlying transaction resulting in the indirect transfer will not affect the qualifications of the holder of the license, and that the indirect transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the indirect transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Timika Shafeek-Horton, Assistant General Counsel, Duke Energy Law Department, Mail Code EC07H–7109, P.O. Box 1006, 526 South Church St., Charlotte, NC 28201–1006, (704) 382–6373, (704) 382–6056 (fax); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the indirect license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated August 5, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of December, 2005.

For the Nuclear Regulatory Commission.

John Stang,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–8145 Filed 12–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation; Catawba Nuclear Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Conforming Amendments, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. NPF–35 and NPF–52 for the Catawba Nuclear Station, Units 1 and 2, to the extent currently held by Duke Energy Corporation, as co-owner and licensed operator of Catawba Nuclear Station, Unit 1, and as licensed operator of Catawba Nuclear Station, Unit 2. The indirect transfer would be to a new holding company to be named Duke Energy Corporation. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed change of the name of the licensee from Duke Energy Corporation to Duke Power Company LLC.

According to an application for approval filed by Duke Energy Corporation, following approval of the proposed indirect license transfers, a new holding company would be created to become the parent of the licensee. No physical changes to the Catawba Nuclear Station, Units 1 and 2, facility or operational changes are being proposed in the application.

The proposed amendment would reflect the proposed change in the name of the licensee from Duke Energy Corporation to Duke Power Company LLC, following the licensee's conversion from a corporation to a limited liability company. Although the licenses contain antitrust license conditions, there are no proposed changes to these conditions.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed underlying transaction resulting in the indirect transfer will not affect the qualifications of the holder of the license, and that the indirect transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the indirect transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Timika Shafeek-Horton, Assistant General Counsel, Duke Energy Law Department, Mail Code EC07H–7109, P.O. Box 1006, 526 South Church St., Charlotte, NC 28201–1006, (704) 382–6373, (704) 382–6056 fax; the General

Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the indirect license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated August 5, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of December 2005.

For the Nuclear Regulatory Commission.

John Stang,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E5–8148 Filed 12–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; License No. NPF–49]

In the Matter of Interstate Power and Light Company; Nuclear Management Company, LLC; (Duane Arnold Energy Center); Order Approving Transfer of License and Conforming Amendment

I. Interstate Power and Light Company (IPL), Nuclear Management Company, LLC (NMC) Central Iowa Power Cooperative, and Corn Belt Power Cooperative are holders of Facility Operating License No. DPR–49, which authorizes the possession, use and operation of Duane Arnold Energy Center (DAEC). NMC is licensed by the U.S. Nuclear Regulatory Commission (NRC, the Commission) to operate DAEC. The other licensees are authorized to possess DAEC. DAEC is located at Linn County, Iowa.

II. By letter dated August 1, 2005, NMC, IPL and FPL Energy Duane Arnold, LLC, (FPLE Duane Arnold), submitted an application requesting approval of the direct license transfer that would be necessary in connection with the IPL's proposed transfer to FPLE Duane Arnold, a subsidiary of FPL Energy, LLC (FPLE), IPL's 70-percent ownership interest in DAEC. The application also requested approval of the transfer of NMC's operating authority to FPLE Duane Arnold.

Supplemental information was provided by letters dated October 11, November 1, November 2, and November 28, (hereinafter, the August 1, 2005, and supplemental information will be referred to collectively as the application, unless otherwise noted). NMC also requested approval of a conforming license amendment that would reflect the proposed transfer of ownership of IPL's 70-percent interest in DAEC to FPLE Duane Arnold; and reflect the proposed transfer of operating authority to FPLE Duane Arnold. The amendment would delete the references to IPL and NMC in the license as appropriate, and replace them with references to FPLE Duane Arnold. No physical changes to the facility or operational changes were proposed in the application. After completion of the proposed transfers, FPLE Duane Arnold would be an owner (70-percent interest) and the operator of DAEC. The 30-percent ownership interest in DAEC, collectively held by Central Iowa Power Cooperative (CIPCO) and the Corn Belt Power Cooperative (Corn Belt), would be unchanged.

Approval of the transfer of the facility operating license and conforming license amendment is requested by NMC pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR). Notices of the request for approval and opportunity for a hearing were published in the **Federal Register** on September 20, 2005, (70 FR 55175). No comments were received. No requests for hearing or petitions for leave to intervene were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that FPLE Duane Arnold is qualified to hold the license for DAEC to the extent previously held by IPL regarding its ownership interest, and is qualified to hold the operating authority under the license, and that the transfer of the license as proposed in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has also found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated December 23, 2005.

III. Accordingly, pursuant to Sections 161b, 161i, 161o and 184 of the Act, 42 U.S.C. 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, it is hereby ordered that the transfer of the license, as described herein, to FPLE Duane

Arnold is approved, subject to the following conditions:

(1) Prior to completion of the transfer of the license, FPLE Duane Arnold shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) At the time of the closing of the transfer of the license from Interstate Power and Light Company (IPL) to FPLE Duane Arnold, IPL shall transfer to FPLE Duane Arnold IPL's decommissioning funds accumulated as of such time, with an aggregate minimum value of at least $186 million, and FPLE Duane Arnold shall deposit such funds in an external decommissioning trust fund established by FPLE Duane Arnold for DAEC. FPLE Duane Arnold shall take all necessary steps to ensure that this external trust fund is maintained in accordance with the requirements of this order approving the license transfer, NRC regulations, and consistent with the safety evaluation supporting this order. The trust agreement shall be in a form acceptable to the NRC.

(3) By the date of closing of the transfer of the 70 percent ownership interest in DAEC from IPL to FPLE Duane Arnold, FPLE Duane Arnold shall obtain a parent company guarantee from FPL Group Capital in an initial amount of at least $75 million (in 2005 dollars) to provide additional decommissioning funding assurance regarding such ownership interest, which guarantee must be in accordance with NRC regulations regarding such documents. Required funding levels shall be recalculated annually and, as necessary, FPLE Duane Arnold shall either obtain appropriate adjustments to the parent guarantee or otherwise provide any additional decommissioning funding assurance necessary for FPLE Duane Arnold to meet NRC requirements under 10 CFR 50.75.

(4) FPLE Duane Arnold shall take no action to cause FPL Group Capital, or its successors and assigns, to void, cancel, or modify its $50 million contingency commitment to FPLE Duane Arnold, as represented in the application, or cause it to fail to perform or impair its performance under the commitment, without the prior written consent from the NRC. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after completion of the license transfer. Also, FPLE Duane Arnold shall inform the NRC in writing any time that it draws upon the $50 million commitment.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

It is further ordered that FPLE Duane Arnold shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the transfer of the IPL 70-percent interest in DAEC no later than 5 business days prior to closing. Should the transfer of the license not be completed by December 31, 2006, this Order shall become null and void, provided however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated August 1, 2005, and supplemental letters dated October 11, November 1, November 2, and November 28, 2005, and the non-proprietary safety evaluation dated December 15, 2005, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of December 2005.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–8204 Filed 12–29–05; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

DATE AND TIMES: Tuesday, January 10, 2006; 8 a.m. and 10 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: January 10—8 a.m. (Open); 10 a.m. (Closed).

MATTERS TO BE CONSIDERED:

Tuesday, January 10 at 8 a.m. (Open)

1. Minutes of the Previous Meeting, December 6, 2005.
2. Remarks of the Postmaster General and CEO Jack Potter.
3. Holiday Mailing Recap.
4. Committee Reports.
5. Consideration of Board Resolution on Capital Funding.
6. Annual Report on Government in the Sunshine Act Compliance.
7. Fiscal Year 2005 Comprehensive Statement on Postal Operations, including the Preliminary Fiscal Year 2007 Annual Performance Plan—GPRA.
8. Capital Investment—Northeast Metro Michigan Processing & Distribution Center.
9. Election of Chairman and Vice Chairman of the Board of Governors.
10. Tentative Agenda for the February 7–8, 2006, meeting in Washington, DC.

Tuesday, January 10 at 10 a.m. (Closed)

1. Filing with the Postal Rate Commission for Extension of Market Test for Repositionable Notes.
2. Strategic Planning.
3. Financial Update.
4. Rate Case Planning.
5. Labor Negotiations Planning.
6. Personnel Matters and Compensation Issues.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 05–24685 Filed 12–28–05; 11:36 am]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on

respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Pension Plan Reports: OMB 3220–0089.

Under section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employees receive monthly pension payments, or lump-sum pension payments, from their former railroad employer, which are based in whole or in part on contributions from that railroad employer. The employees' own contributions to their pension accounts do not cause a reduction. An employer private pension is described in 20 CFR 216.40–216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such employer pension plans cause reductions to the RRB supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the employer made contributions to the pension; (d) whether or not the employee was cashed out before attaining retirement age under the employer pension plan or received the pension in a lump-sum payment in lieu of monthly pension payments; and (e) whether the employer pension plan continues when the employer status under the RRA changes. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form(s) G–88p (Employer's Supplemental Pension Report), G–88r (Request for Information About New or Revised Pension Plan), and G–88r.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

The RRB proposes the addition of several new items to Form G–88p which include ''skip patterns'' intended to allow employers to bypass items when no response is needed. The RRB also proposes editorial and reformatting changes for clarification purposes to several existing items on G–88p. The RRB proposes no changes to Forms G–88r and G–88r.1.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G–88p	750	8	100
G–88r	10	10	2
G–88r.1	5	7	1
Total	765	.....	103

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E5–8140 Filed 12–29–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53022; File No. SR–NASD–2005–145]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Certificate of Designation for Preferred Stock of The Nasdaq Stock Market, Inc.

December 23, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on December 21, 2005.[3] Nasdaq has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq modified the basis for summary effectiveness of the filing from Rule 19b–4(f)(3) under the Act to Rule 19b–4(f)(6), which pertains to non-controversial rule changes.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt a Certificate of Designation, Preferences and Rights (a ''Certificate of Designation'') of Series D Preferred Stock (''Series D Preferred''). Nasdaq will implement the proposed rule change as soon as practicable.[6]

The text of the proposed rule change is available on Nasdaq's Internet Web site (*http://www.nasdaq.com*), at NASD's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing the Certificate of Designation described below. Under Article Fourth of Nasdaq's Restated Certificate of Incorporation, Nasdaq's Board of Directors may authorize the issuance of preferred stock and fix its designation, powers, preferences and rights, as well as any qualifications, limitations, and restrictions upon it. Under Delaware law, the Certificate of Designation is deemed to be an amendment to Nasdaq's Restated Certificate of Incorporation, and as such, Nasdaq is filing the Certificate of Designation with the Commission.

In 2002, Nasdaq fixed the designation, powers, preferences, and rights for its Series B Preferred Stock (''Series B Preferred'') and issued a single share of the Series B Preferred to its parent corporation, the NASD.[7] The Series B Preferred holder votes, together as one class with Nasdaq's common stock, on all matters submitted to a vote of holders of common stock. The Series B Preferred has variable voting rights such that the number of votes entitled to be cast by the holder of the Series B Preferred equals that number of votes that, together with votes otherwise entitled to be cast by the holder of the Series B Preferred Stock at a meeting, whether by virtue of share ownership, proxies, voting trust arrangements or otherwise, entitle the holder to exercise one vote more than one-half of all votes entitled to be cast. Thus, by virtue of its ownership of the Series B share, NASD controls Nasdaq, and would continue to control Nasdaq without regard to its level of ownership of Nasdaq common stock.

Nasdaq currently derives its regulatory authority from NASD's registration as a national securities association. Nasdaq exercises its authority by virtue of a delegation from the NASD under the terms of the Commission-approved Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (the ''Delegation Plan''), but the Series B Preferred provides a means by which the NASD may assure that Nasdaq operates in accordance with the Delegation Plan. The Series B Preferred provides, however, that it loses its voting rights and will be redeemed by Nasdaq upon Nasdaq ''becoming registered with the U.S. Securities and Exchange Commission as a national securities exchange,'' because Nasdaq would no longer be required to operate under the Delegation Plan if it was authorized by the Commission to operate as an exchange.

In 2000 and 2001, Nasdaq filed an application to register as a national securities exchange. Earlier this year, Nasdaq filed substantial amendments to its exchange registration application, under which Nasdaq would become a holding company and a newly formed subsidiary, The NASDAQ Stock Market LLC (''NASDAQ LLC''), would become registered as a national securities exchange. Nasdaq is optimistic that its amended exchange registration application will be approved in the near future. However, it is likely that NASDAQ LLC would not operate as an exchange until some date after the issuance of an order approving its exchange registration application. Accordingly, in the event of the issuance of such an approval order, it is likely that Nasdaq would still need to continue to operate pursuant to the Delegation Plan until such time as NASDAQ LLC begins to operate as an exchange (the ''Operational Date''). During this transitional period, NASD would need to continue to exercise control with respect to Nasdaq. The terms of the Series B Preferred, however, are not well suited to possible scenarios under which exchange registration may be implemented, such as in this case, exchange registration would occur in advance of the Operational Date, and NASDAQ LLC, rather than Nasdaq, would be the entity registered as an exchange.[8]

Accordingly, Nasdaq proposes to adopt the Certificate of Designation and issue one share of Series D Preferred to the NASD in exchange for the cancellation of the outstanding share of Series B Preferred. The terms and conditions of the Series D Preferred are identical in all respects to those of the Series B Preferred, except that the triggering event for a loss of voting rights and redemption of the Series D Preferred would be ''the first date on which [Nasdaq] and all subsidiaries thereof are no longer operating in any respect pursuant to authority delegated by'' NASD under the Delegation Plan. Thus, if exchange registration is granted to NASDAQ LLC, the Series D Preferred would lose its voting rights on the Operational Date.[9] NASD has also filed a proposal that would remove Nasdaq from the Delegation Plan,[10] and Nasdaq expects that if the proposal is approved by the Commission, it will be implemented on the Operational Date.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general, and with sections 15A(b)(2) and (b)(6) of the Act,[12] in particular, which require, among other things, that the NASD be so organized and have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance with the provisions of the Act, and the NASD's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

[6] The Commission notes that on December 14, 2005, Nasdaq filed a certificate of designation for the Series D Preferred with the Secretary of the State of Delaware. On December 20, 2005, Nasdaq and NASD entered into an exchange agreement pursuant to which NASD exchanged one share of Nasdaq's Series B Preferred Stock for one newly issued Series D Preferred. *See* Nasdaq's Form 8–K, dated December 20, 2005.

[7] *See* Securities Exchange Act Release No. 45638 (March 25, 2002), 67 FR 15268 (March 29, 2002).

[8] Earlier this year, Nasdaq stockholders approved an amendment to the Series B Preferred that would result in the termination of voting rights upon the registration of Nasdaq or a subsidiary thereof as an exchange. The amendment, however, did not address ambiguity occasioned by a delay in time between the approval of Nasdaq's exchange registration and the Operational Date.

[9] In the unlikely event that there is a transitional period during which NASDAQ LLC operates as an exchange for certain stocks while Nasdaq continues to operate as a facility of the NASD for other stocks, the Series D Preferred would remain until Nasdaq had ceased to operate in that capacity.

[10] *See* Securities Exchange Act Release No. 52049 (July 15, 2005), 70 FR 42398 (July 22, 2005).

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(2) and (b)(6).

trade, and, in general, to protect investors and the public interest. The issuance of the Series D Preferred will ensure that NASD continues to control Nasdaq until NASDAQ LLC operates as an exchange and Nasdaq is no longer operating pursuant to the Delegation Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change, as amended, as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A)(iii) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14] Nasdaq represents that the foregoing rule change: does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30-days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change, as amended, effective and operative upon filing.

The Commission has determined to waive the five-day pre-filing requirement and the 30-day operative delay period.[15] The Commission notes that accelerating the operative date will allow Nasdaq to exchange the Series B Preferred for the Series D share with NASD. Therefore, the foregoing rule change has become immediately effective and operative upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR–NASD–2005–145 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–145. 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 Commissions 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. Copies of the filing also will be available for inspection and copying at the principal office of NASD. 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–2005–145 and should be submitted on or before January 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–8128 Filed 12–29–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 53021; File No. SR–Phlx–2005–86]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Split Price Priority in Open Outcry

December 23, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on December 21, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The 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 Phlx proposes to extend, for an additional six-month period, a pilot program set forth in Exchange Rule 1014(g)(i)(C), governing purchase or sale priority for orders of 100 option contracts or more (''pilot''). The rule affords priority to members that purchase (sell) fifty or more contracts at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

a particular price at the next lower (higher) price in purchasing (selling) the equivalent number of contracts in the same series. Such priority only applies to orders that represent the same transaction or order as the previous purchase (sale), and only applies to transactions in equity options and options overlying Exchange Traded Fund Shares (''ETFs'') that are effected in open outcry. The pilot is scheduled to expire December 31, 2005.[6] The Exchange proposes to extend the pilot through June 30, 2006. The text of the proposed rule change is available on the Phlx Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary and at the Commission's Public Reference Room.[7]

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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot, which establishes rules that facilitate the execution of large orders, which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to current Exchange priority rules.

The pilot, as set forth in Exchange Rule 1014(g)(i)(C), establishes a priority rule regarding open outcry split price transactions in equity options and options overlying ETFs generally to permit a member who is responding to an order[8] for at least 100 contracts[9] who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield to existing customer interest in the limit order book. Absent this proposed rule, such orders would be required to yield priority.[10]

For example, when a floor broker (''Floor Broker'') is representing a customer's order to purchase 100 contracts and a member executes a purchase of 50 of those contracts at a price of $.30, the member would have priority over all market participants to purchase the remaining 50 contracts in the order at $.25.[11] Two trades would be reported to the tape, one a purchase of 50 contracts at $.30, and the other a purchase of 50 contracts at $.25. The effect to the customer would be a net purchase price of $.275 for 100 contracts.

The Exchange believes that the pilot should lead to more aggressive quoting by crowd participants, which in turn could lead to better executions. A crowd participant might be willing to trade at a better price for a portion of an order if he/she were assured of trading with the balance of the order at the next pricing increment. As a result, Floor Brokers representing orders in the trading crowd might receive better-priced executions.

Under the split price priority rule, the Exchange's Options Committee[12] has the ability to increase the minimum qualifying order size to a number larger than 100 contracts. Any changes, which would have to apply to all products under the committee's jurisdiction, would be announced to the membership via Exchange Circular.

One possible limitation on the ability of crowd participants to use the split price priority rule is the current requirement that orders for controlled accounts[13] generally must yield priority to orders for customer accounts. Using the example above, if the $.25 represents orders for customer accounts, those orders would have priority over orders for controlled accounts at $.25. This means that a holder of a controlled account who is willing to trade at $.30 and $.25 may be unwilling to trade at the price of $.30 if he/she cannot trade the balance of the order at $.25 because of the requirement to yield to orders for customer accounts.[14] The Exchange believes that, in the context of the split-price priority rule, this could compromise the member's willingness to execute the first part of the order at a price of $.30 (using the above example), thereby potentially making it difficult to achieve price improvement for the Floor Broker's customer on the Phlx. Instead, the order might trade at another exchange that has no impediments, *i.e.*, no customer interest at those price levels. Accordingly, one significant aspect of the pilot is a limited exception to the existing priority requirement concerning controlled accounts.

The Exchange believes that it is reasonable to make a limited exception to the rule requiring controlled accounts to yield priority to non-controlled accounts in order to allow split price trading. In this regard, the exception is similar in operation to the current limited ''spread-type'' priority exception[15] under Exchange rules. This exception (which is established in the rules of many options exchanges) was intended to facilitate the trading of spread, or ''hedge'' orders,[16] which by virtue of their multi-legged composition could be more difficult to trade without a limited exception to the priority rule for one of the legs. The purpose behind the split-price priority exception is the same—to bring about the execution of large orders, which by virtue of their size and the need to execute them at multiple prices may be difficult to execute without a limited exception to the priority rules. The split-price priority exception operates in the same manner as the hedge order exception by

[6] *See* Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR–Phlx–2005–28).

[7] The proposed rule change amends the current text of Phlx Rule 1014(g)(i)(C) by adding a phrase to indicate that the provision is ''subject to a pilot scheduled to expire June 30, 2006.''

[8] Clarification as per telephone call on December 21, 2005, between Richard Rudolph, Vice President and Counsel, Phlx and Ira Brandriss, Special Counsel, Division of Market Regulation, Commission (''Telephone Call of December 21st'').

[9] Orders for a size of less than 100 contracts would not be affected by this proposed rule.

[10] *See, e.g.*, Exchange Rule 119(a).

[11] Clarified as per Telephone Call of December 21st.

[12] The Options Committee has general supervision of the dealings of members on the options trading floor. *See* Exchange By-Law Article X, Section 10–20.

[13] A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts. Equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price. Orders of controlled accounts generally are not required to yield priority to other controlled account orders. *See* Exchange Rule 1014(g)(i)(A).

[14] Clarified as per Telephone Call of December 21st.

[15] Currently, a member that executes at least one option leg of a spread order at a better price than established bid or offer for that option contract, and no option leg of the spread order is executed at a price outside of the established bid or offer for that option contract, has priority over all other orders at the same price. *See* Exchange Rule 1033(d).

[16] The Exchange defines a ''hedge order'' as any spread type order for the same account. *See* Exchange Rule 1066(f).

allowing a member effecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment, even if there are orders in the book at the same price.

In order to address potential concerns regarding section 11(a) of the Act,[17] the Exchange adopted Commentary .19 to Exchange Rule 1014 as part of the pilot. Section 11(a) generally prohibits members of national securities exchanges from effecting transactions for the member's own account, absent an exemption. Under the proposal, there could be situations where because of the limited exception to customer priority, orders on behalf of members could trade ahead of orders of nonmembers in violation of section 11(a). Commentary .19 makes it clear that Floor Brokers may avail themselves of the split-price priority rule, but that they are obligated to ensure compliance with section 11(a). Specifically, a Floor Broker bidding (offering) on behalf of a Phlx member broker-dealer that is not a specialist or Registered Options Trader (''ROT'') on the Exchange is required to ensure that the order he/she represents qualifies for an exemption from section 11(a)(1) of the Act or that the transaction satisfies the requirements of Rule 11a2–2(T)[18] under the Act.[19] Otherwise, the Floor Broker is required to yield priority to order(s) for the account(s) of non-members.

[17] 15 U.S.C. 78k(a).

[18] 17 CFR 240.11a2–2T. Rule 11a2–2T generally states that a member of a national securities exchange (the ''initiating member'') may not effect a transaction on that exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion unless:

(i) the transaction is executed on the floor, or through use of the facilities, of the exchange by a member (the ''executing member'') which is not an associated person of the initiating member;

(ii) the order for the transaction is transmitted from off the exchange floor;

(iii) neither the initiating member nor an associated person of the initiating member participates in the execution of the transaction at any time after the order for the transaction has been so transmitted; and

(iv) in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof retains any compensation in connection with effecting the transaction: provided, however, that this condition shall not apply to the extent that the person or persons authorized to transact business for the account have expressly provided otherwise by written contract referring to Section 11(a) of the Act and this section executed on or after March 15, 1978, by each of them and by such exchange member or associated person exercising investment discretion.

[19] The Exchange notes that there are other exemptions from the requirements of Section 11(a).

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act[20] in general, and furthers the objectives of section 6(b)(5) of the Act[21] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by establishing a limited priority rule regarding split-price transactions.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act,[22] and Rule 19b–4(f)(6) thereunder.[23] 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.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the Phlx to extend without interruption a rule similar to rules already in place at other options exchanges and thus would permit the Exchange to continue to better compete for larger-sized orders. For these reasons, the Commission designates the proposed rule change to be effective upon filing with the Commission.[26]

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–86. 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

[26] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–86 and should be submitted on or before January 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–8129 Filed 12–29–05; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax number listed below:

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400. E-mail: *OPLM.RCO@ssa.gov.*

The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Redetermination of Eligibility for Help with Medicare Prescription Drug Plan Costs—0960–NEW. Under the aegis of the Medicare Modernization Act of 2003 (Pub. L. 108–173), SSA will conduct low-income subsidy eligibility redeterminations for Medicare beneficiaries who filed for the subsidy and were determined by SSA to be eligible. Subsidy eligibility redeterminations will be conducted when: (1) Medicare Part D subsidy beneficiaries use form SSA–1026–RET to report a change in income, resources, or household information in response to SSA's inquiry via form SSA–L1026; (2) Medicare Part D subsidy beneficiaries report a change in income, resources, or household information on their own using form SSA–1026–RET; (3) Medicare Part D subsidy beneficiaries use form SSA–1026–SCE to report a subsidy-changing event which could potentially impact the amount of their subsidy, including marriage, separation, divorce/annulment, or spousal death. The respondents are current recipients of the Medicare Part D low-income subsidy who will undergo an eligibility redetermination for one of the reasons mentioned above. Following is a description of the forms in this collection, the number of respondents who will complete them, and their burden data.

Form	Explanation	Number of respondents	Frequency of response (per year)	Average burden per response (in minutes)	Estimated annual burden (in hours)
SSA–L1026	Passive redetermination letter informing Medicare Part D subsidy recipients what income, resource, and household information SSA has on file for them, and asking if this information has changed.	1,500,000	1	5	125,000
SSA–1026–RET	Redetermination form completed by Medicare Part D subsidy recipients who said their income, resource, or household information had changed in their response to form SSA–L1026. Beginning in 2007, this form will also be used as a cyclical redetermination form to be completed by Medicare Part D subsidy recipients who are automatically sent the form based on certain profile/selection criteria.	300,000	1	20	100,000
SSA–1026–SCE	Redetermination form completed by Medicare Part D subsidy recipients who called SSA to inform them of an event which is potentially subsidy-changing (marriage, divorce, annulment, legal separation, spousal death). This form, which is identical to form SSA–1026–RET but has a different cover sheet, will replace form OMB No. 0960–0703 (SSA–1020–SC).	76,000	1	20	25,333
Total	.....	1,876,000	—	—	250,333

[27] 17 CFR 200.30–3(a)(12).

Dated: December 23, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E5–8094 Filed 12–29–05; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer; (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974; (SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, Fax: 410–965–6400, E-mail: OPLM.RCO@ssa.gov.

The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Consent Based Social Security Number Verification Process—0960–NEW

Background

The Social Security Administration (SSA) has provided limited fee based Social Security Number (SSN) verification service to private businesses and other requesters that obtain a valid, signed consent form from the Social Security Number Holder. Based on the consent forms, SSA verifies the Number Holders' SSNs for the requesting party. The Privacy Act of 1974, 5 U.S.C. 552a(b), section 1106 of the Social Security Act, 42 U.S.C. 1306, and SSA regulation at 20 CFR 401.100 establish the legal authority for SSA to provide SSN verifications to third party requesters based on consent. Currently, the consent-based SSN verification service for high volume requesters is a paper-driven, labor-intensive process. In recent years, the demand for SSN verification has grown within the business community. As a result, SSA is developing an Agency strategy to perform fee based SSN verifications with consent in a high volume, centralized process.

The Consent Based Social Security Number Verification (CBSV) Process is the first phase of the Agency's long term strategy to provide the business community with fee based disclosures with consent in high volume. SSA is developing CBSV as a user-friendly, Internet-based application with safeguards that will protect the public's information. In addition to the benefit of providing high volume, centralized SSN verification services to the business community in a secure manner, CBSV also will provide the Agency with inherent cost and workload management benefits.

The CBSV Collection

The CBSV is a fee based automated SSN verification service that can be used by private businesses and other requesting parties who register with SSA to use the system and have obtained valid consent from Number Holders. The purpose of the information collection is to verify for the requesting party that the submitted name and SSN match or do not match the information contained in the SSA records. After completing a registration process and paying the fee, the requesting party can submit a file through the CBSV Internet application containing names of Number Holders who have given valid consent, along with each Number Holder's accompanying SSN and date of birth (if available). The Agency matches the information against SSA's Master File of Social Security Numbers, using SSN, name, date of birth and gender code (if available). The requesting party retrieves the results file from SSA; the results file indicates a match or no match for each SSN submitted.

Under the CBSV process, the requesting party does not submit the consent forms to SSA. SSA will require each requesting party to retain a valid consent form for each SSN verification request for a period of six years. The requesting party is permitted to retain the consent forms in either electronic or paper format.

To ensure the integrity of the CBSV Process, SSA has added a strong audit component that requires audits (called ''compliance reviews'') at the discretion of the agency with all audit costs to be borne by the requesting party. These reviews will be conducted by independent certified public accountants (CPAs) to ensure compliance with all the terms and conditions of the parties' agreement with SSA, including a review of the consent forms. This review is performed at the requesting party's place of business to ensure the integrity of the process. In addition, SSA reserves the right to perform unannounced onsite inspections of the entire process including review of the technical systems which maintain the data and transaction records at the requesting party's place of business.

The respondents to the CBSV collection are the participating companies, members of the public who consent to the SSN verification, and CPAs who provide compliance review services.

Type of Request: New information collection.

Respondent	Requirement	Number of respondents per year	Frequency of response	Average of burden per response (minutes)	Annual burden (hours)
Participating Companies	Completion of Registration Process	150	1	120	300
	Creation of file of SSN requests, data entry, file formatting, and maintaining required documentation and forms.	150	*251	120	75,300

Respondent	Requirement	Number of respondents per year	Frequency of response	Average of burden per response (minutes)	Annual burden (hours)
	Using the system to upload request file, check status, and download results file.	150	251	75	47,063
	Storing consent forms	150	251	60	37,650
	Activities related to compliance review.	150	1	120	300
General Public Whose SSNs Will Be Verified.	Reading and signing Authorization for the Social Security Administration to Release Social Security Number Verification (Form SSA–89 a.k.a. consent form).	6,900,000	1	3	345,000
	Responding to CPA re-contact; each CPA contacts 50 people.	7,500	1	5	625
CPAs	Conducting compliance review and preparing written report of findings.	150	1	4,800	12,000
Total		6,907,800			518,238

* Please note there are 251 Federal business days per year (excluding Federal holidays) on which a requesting party could submit a file.

The estimated first year cost burden to be shared by all participating companies for the CBSV service is—$7,154,589.00. This cost figure represents the agency's estimated staff requirements, agency systems development costs, annual account set-up fee, company cost per file submitted and files storage and maintenance costs, and company cost for the services of a CPA to perform compliance reviews.

Dated: December 22, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E5–8095 Filed 12–29–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5256]

30-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR), OMB Control Number 1405–0050

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Department of State Acquisition Regulation (DOSAR).
- *OMB Control Number:* 1405–0050.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, Office of the Procurement Executive (A/OPE).
- *Form Number:* N/A.
- *Respondents:* Any business, other for-profit, individual, not-for-profit, or household organization wishing to receive Department of State contracts.
- *Estimated Number of Respondents:* 3,166.
- *Estimated Number of Responses:* 3,166.
- *Average Hours Per Response:* Varies.
- *Total Estimated Burden:* 274,320.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 30, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Gladys Gines, Procurement Analyst, Office of the Procurement Executive, Department of State, Washington, DC 20522, who may be reached on 703–516–1691 or at *ginesgg@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

This information collection covers pre-award and post-award requirements of the DOSAR. During the pre-award phase, information is collected to determine which bids or proposals offer the best value to the U.S. Government. Post-award actions include monitoring the contractor's performance; issuing modifications to contracts; dealing with unsatisfactory performance; issuing payments to the contractor; and closing out the contract upon its completion.

Methodology

Information is collected from prospective offerors to evaluate their proposals. The responses provided by the public are part of the offeror's proposals in response to Department solicitations. This information may be submitted electronically (through fax or e-mail), or may require a paper submission, depending upon complexity. After contract award, contractors are required to submit

information, on an as-needed basis, and relate to the occurrence of specific circumstances.

Dated: December 5, 2005.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. E5–8108 Filed 12–29–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5255]

30-Day Notice of Proposed Information Collection: Form DS–4076, Request for Commodity Jurisdiction (CJ)/U.S. Munitions List (USML) Determination, OMB Control Number 1405–0163

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Request for Commodity Jurisdiction (CJ)/U.S. Munitions List (USML) Determination.

OMB Control Number: 1405–0163.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).

Form Number: DS–4076.

Respondents: Business organizations.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Average Hours per Response: 2 hours.

Total Estimated Burden: 600 hours.

Frequency: Once per year per respondent.

Obligation to Respond: Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 30, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: Katherine_T._Astrich@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20530.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Michael T. Dixon, Director, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, SA–1, Room H1200, 2401 E Street, NW., Washington, DC 20037, who may be reached via e-mail at *DixonMT@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: The information will be used to evaluate whether or not a particular defense article or defense service is covered by the U.S. Munitions List; to change the U.S. Munitions List category designation; to confirm the U.S. Munitions List Category designation; to remove a defense article from the U.S. Munitions List; or to reconsider a previous commodity jurisdiction determination.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: Mail, personal delivery, and/or electronically.

Dated: December 16, 2005.

Gregory M. Suchan,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E5–8118 Filed 12–29–05; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5257]

Bureau of International Security and Nonproliferation; Imposition of Nonproliferation Measures Against Foreign Entities, Including a Ban on U.S. Government Procurement, and Removal of Penalties From One Entity

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that nine entities have engaged in activities that require the imposition of measures pursuant to section 3 of the Iran Nonproliferation Act of 2000, which provides for penalties on entities for the transfer to Iran since January 1, 1999, of equipment and technology controlled under multilateral export control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists, but falling below the control list parameters, when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) other items with the potential of making such a material contribution, when added through case-by-case decisions, and (c) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists. It was also determined that sanctions imposed on an Indian entity, effective September 23, 2004 (69 FR 4845) are rescinded.

EFFECTIVE DATE: December 23, 2005.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Missile Threat Reduction, Bureau of International Security and Nonproliferation, Department of State (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to section 4 of the Iran Nonproliferation Act of 2000 (Pub. L. 106–178), the U.S. Government determined on November 15, 2005 that the sanctions imposed effective September 23, 2004 (69 FR 4845), on the Indian entity Dr. C. Surendar, are rescinded.

Pursuant to sections 2 and 3 of the Act, the U.S. Government also determined that the measures authorized in section 3 of the Act shall apply to the following foreign entities identified in the report submitted pursuant to section 2(a) of the Act:

China Aero-Technology Import and Export Corporation. (CATIC) (China) and any successor, sub-unit, or subsidiary thereof;

China North Industries Corporation (NORINCO) (China) and any successor, sub-unit, or subsidiary thereof;

Hongdu Aviation Industry Group (HAIG) (China) and any successor, sub-unit, or subsidiary thereof;

LIMMT Metallurgy and Minerals Company Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Ounion (Asia) International Economic and Technical Cooperation Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Sabero Organic Chemicals Gujarat Ltd. (India) and any successor, sub-unit, or subsidiary thereof;

Sandhya Organic Chemicals PVT Ltd. (India) and any successor, sub-unit, or subsidiary thereof;

Steyr-Manlicher Gmbh (Austria) and any successor, sub-unit, or subsidiary thereof; and

Zibo Chemet Equipment Company (China) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons;

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years from the effective date, except to the extent that the Secretary of State or Deputy Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Dated: December 21, 2005.

Stephen G. Rademaker,

Acting Assistant Secretary of State for International Security and Nonproliferation, Department of State.

[FR Doc. E5–8116 Filed 12–29–05; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Delegation of Authority 286]

Delegation by the Secretary of State to the Under Secretary for Political Affairs of Authority To Determine Exemptions From Port-of-Entry (NSEERS) Special Registration, Fingerprinting, and Photographing Requirements (General)

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including the authority of section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651a), I hereby delegate to the Under Secretary for Political Affairs the authority vested in the Secretary of State by 8 CFR 264, 1(f) to: (1) Determine that special registration, fingerprinting, and photographing requirements shall not apply to an individual nonimmigrant alien upon arrival in the United States; and (2) determine, jointly with the Secretary of the Department of Homeland Security, that special registration, fingerprinting. and photographing requirements shall not apply to classes of nonimmigrant aliens upon arrival in the United States.

Any authorities covered by this delegation may also be exercised by the Secretary of State or the Deputy Secretary of State.

Any act, executive order, regulation, or procedure subject to or affected by this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

The Under Secretary for Political Affairs may not redelegate the authorities delegated by this delegation of authority.

This delegation of authority supplements Delegation of Authority No. 253 and shall be published in the **Federal Register**.

Dated: September 28, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E5–8117 Filed 12–29–05; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Gulfstream Air Charter, Inc. for Commuter Air Carrier Authorization

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2005–12–14), Docket OST–2005–21348.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Gulfstream Air Charter, Inc., fit, willing, and able, and awarding it a commuter air carrier authorization to engage in scheduled passenger air transportation as a commuter air carrier.

DATES: Persons wishing to file objections should do so no later than January 6, 2006.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2005–21348 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room PL–401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Lauralyn J. Remo, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: December 23, 2005.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. E5–8125 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance, Jackson County—Reynolds Field, Jackson, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale or lease of the airport property. The proposal consists of two (2) parcels of

land totaling approximately 68 acres. Current use and present condition is vacant grassland with intermittent wetland areas. The land is currently zoned residential. Parcel 15A was acquired under FAA Project No. 8–26–0051–02. Parcel 62 was not acquired with federal funds. There are no impacts to the airport by allowing the airport to dispose of the property. The airport desires to enter into a long-term lease to provide a long-term revenue source, or to sell the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal or lease of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United State Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

This amends the **Federal Register** Notice published on September 1, 2005 to allow the County of Jackson, Michigan, the option to sell or lease the property requested to be released.

DATES: Comments must be received on or before January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Project Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO 607, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2933/Fax Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Janckson County-Reynolds Field, Jackson, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Jackson, Jackson County, Michigan, and described as follows:

Parcel 15A—37.444 Acres.

Part of the Southwest ¼ of the Northwest ¼ of Section 28, Town 2 South, Range 1 West, Blackman Township, Jackson County, Michigan being described as: Commencing at the West ¼ post of said Section 28; thence North 00° 11′29″ East, along the West line of said Section 28, a distance of 54.81 feet to the North right-of-way line of I–94 and being the Point of Beginning of this description; thence continuing North 00° 11′29″ East, along said West section line, a distance of 1271.67 feet to the Northwest corner of the Southwest ¼ of the Northwest ¼ of said Section 28; then North 89° 44′57″ East, along the North line of said Southwest ¼ of the Northwest ¼, a distance of 1325.56 feet to the Northeast corner of said Southwest ¼ of the Northwest ¼; then South 00° 02′47″ West, along the East line of said Southwest ¼ of the Northwest ¼, a distance of 1132.89 feet to the North right-of-way line of I–94; thence 1273.58 feet, along a curve to the right on said North right-of-way line, with a radius of 5579.65 feet, a central angle of 13° 07′01″, and a chord of South 83° 29′06″ West 1274.58 feet to a point of tangency; thence North 89° 57′24″ West, along said Norht right-of-way line, a distance of 62.53 feet to the Point of Beginning.

Subject to a road right-of-way over the West 33.00 feet as used and occupied by Doney Road.

Subject to an easement for the Hurd-Marvin Drain.

Subject to an easement for Consumers Power as recorded in Liber 804, Page 275, Jackson County Records.

Subject to an easement for storm drainage over the East 10.00 feet of the Southwest ¼ of the Northwest ¼ of Section 28 lying North of the Hurd-Marvin Drain as recorded in Liber 720, Page 236, Jackson County Records.

Parcel 62—30.453 Acres.

Part of the Southeast ¼ of the Northwest ¼ and part of the Southwest ¼ of the Northeast ¼ of Section 28, Town 2 South, Range 1 West, Blackman Township, Jackson County, Michigan being described as: Commencing at the West ¼ post of said Section 28; thence North 00°11′29″ East, along the West line of said Section 28, a distance of 1326.48 feet to the Northwest corner of the Southwest ¼ of the Northwest ¼ of said Section 28; thence North 89°44′57″ East, along the North line of said Southwest ¼ of the Northwest ¼, a distance of 1325.56 feet to the Northeast corner of said Southwest ¼ of the Northwest ¼ and being the Point of Beginning of this description; thence continuing North 89°44′57″ East, along the North line of the Southeast ¼ of the Northwest ¼, a distance of 1325.56 feet to the North-South ¼ line of said Section 28; thence North 89°40′07″ East, along the North line of the Southwest ¼ of the Northeast ¼ of said Section 28, a distance of 123.00 feet; thence South 00°05′53″ East, parallel with and 123.00 feet East of said North-South ¼ line, a distance of 663.98 feet to the North right-of-way line of I–94; thence the following three courses along said I–94 right-of-way,

(1) South 67°22′11″ West a distance of 193.46 feet;

(2) South 71°22′56″ West a distance of 794.42 feet to a point of curvature;

(3) 539.91 feet, along a curve to the right with a radius of 5579.65 feet, a central angle of 05°32′39″, and a chord of South 74°09′16″ West 539.70 feet to the West line of said Southeast ¼ of the Northwest ¼; thence North 00°02′47″ East, along said West line of the Southeast ¼ of the Northwest ¼, a distance of 1132.89 feet to the Point of Beginning.

Subject to an easement for the Hurd-Marvin Drain.

Subject to an easement for storm drainage over part of the West 20.00 feet of the North 20.00 feet of the Southeast ¼ of the Northwest ¼ of Section 28 as recorded in Liber 721, Page 836, Jackson County Records.

Subject to easements for sanitary sewer over part of the Southeast ¼ of the Northwest ¼ of Section 28 as recorded in Liber 872, Page 320, and Liber 868, Page 307, Jackson County Records.

Issued in Romulus, Michigan on December 21, 2005.

Irene R. Porter,

Manager, Detroit Airports District Office FAA, Great Lakes Region.

[FR Doc. 05–24667 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Rickenbacker International Airport Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport designated aeronautical use to non-aeronautical use and to authorize the release of 0.08 acres of airport property for sale to Air East Business Park, Ltd. The land consists of a parcel formerly used as the southern middle marker site for the instrument landing system (ILS) approach to Runway 23L. The parcel is 60′ x 60′ (3600 SF) and was acquired by the Rickenbacker Port Authority through a Quitclaim Deed dated May 11, 1999 and Deed of Correction dated April 25, 2001 from the United States of America. There are no impacts to the airport by allowing the airport to dispose of the property. There are no longer facilities located on

this parcel and it is currently being used for agricultural purposes. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mary W. Jagiello, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–608, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2956)/FAX Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or at Rickenbacker International Airport, Columbus, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Columbus, Franklin County, Ohio, and described as follows:

Beginning for reference at a Franklin County Monument #0037 found at the intersection of the centerlines of Hayes Road and Pontius Road;

Thence N 02°31′16″ W, a distance of 505.98 feet along the center of Pontius Road to a Franklin County Monument Number 0018 found at an angle point;

Thence N 04°10′29″ E, a distance of 575.69 feet, continuing along the centerline of Pontius Road to a point;

Thence N 85°49′31″ E, a distance of 189.27 feet, leaving said centerline, to the point of true beginning;

Thence N 05°17′57″ W, a distance of 60.00 feet, along a chain link fence, to a point;

Thence N 84°42′03″ E, a distance of 60.00 feet, along a chain link fence to a point;

Thence S 05°17′57″ E, a distance of 60.00 feet, along a chain link fence to a point;

Thence S 84°42′03″ W, a distance of 60.00 feet, along a chain link fence to the point of true beginning containing 3,600 square feet, more or less, and being subject to all easements and restrictions of record.

Bearings are based on the grid bearing of S 86°13′48″ E, as determined by field measurement between Franklin County Engineer's Monument Numbers 9958 and 9962.

Issued in Romulus, Michigan on November 21, 2005.

Irene Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–24665 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Rickenbacker International Airport; Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport designated aeronautical use to non-aeronautical use and to authorize the release of 0.01 acres of airport property for sale to Air East Business Park, Ltd. The land consists of a parcel formerly used as the northern middle marker site for the instrument landing system (ILS) approach to runway 23L. The parcel is 20′ x 20′) and was acquired by the Rickenbacker Port Authority through a Quitclaim Deed dated May 11, 1999 and Deed of Correction dated April 25, 2001 from the United States of America. There are no impacts to the airport by allowing the airport to dispose of the property. There are no longer facilities located on this parcel and it is currently being used for agricultural purposes. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mary W. Jagiello, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–608, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2956)/FAX Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or at Rickenbacker International Airport, Columbus, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Columbus, Franklin County, Ohio, and described as follows:

Beginning for reference at a Franklin County Monument #0038 at an angle point in the centerline of Pontius Road;

Thence S 04°10′29″ E, a distance of 154.75 feet, along the center of Pontius Road to a point;

Thence N 85°49′31″ E, a distance of 183.91 feet, leaving said centerline to the point of true beginning;

Thence N 86°36′11″ E, a distance of 20.00 feet, to a point;

Thence N 03°23′49″ W, a distance of 20.00 feet, to the true point of beginning containing 400 square feet, more or less, and being subject to all easements and restrictions of record;

The bearings in the above description were based on the grid bearing of S 86°13′48″ E, as determined by field measurement between Franklin County Engineer's Monument Numbers 9958 and 9962.

Issued in Romulus, Michigan on November 21, 2005.

Irene Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–24666 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In November 2005, there were two applications approved. This notice also includes information on two applications, one approved in June 2005 and the other approved in October 2005, inadvertently left off the June 2005 and October 2005 notices, respectively. Additionally, two approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Waterloo Airport Commission, Waterloo, Iowa.

Application Number: 05–06–U–00–ALO.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to Be Used in This Decision: $360,000.

Charge Effective Date: July 1, 2004.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required to Collect PFCs: No change from previous decision.

Brief Description of Project Approved For Use: Reconstruction of terminal area ramp.

Decision Date: June 14, 2005.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Puerto Rico Ports Authority, San Juan, Puerto Rico.

Application Number: 05–05–C–00–SJU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $321,135,482.

Earliest Charge Effective Date: June 1, 2008.

Estimated Charge Expiration Date: May 1, 2027.

Class of Air Carriers Not Required to Collect PFCs: None.

Brief Description of Project Approved for Collection at Luis Munoz Marin International Airport (SJU) and Use at Rafael Hernandez Airport (BQN) at a $3.00 PFC Level: Study, design and construct new runway pavement, runway 8/26.

Brief Description of Project Approved for Collection at SJU and Use at Roosevelt Roads Offsite Field at a $3.00 PFC Level: Initial master plan.

Brief Description of Projects Approved For Collection at SJU and Use at SJU at a $4.50 PFC Level:

Rehabilitate lighting system, runway 8/26, and relocation of north vault.
Construct and extend taxiway Sierra embankment.
Runway safety area extension, runway 8/26, design and construction.
Reconstruct runway 10/28.
Upgrade security fence and security access road.

Brief Description of Projects Approved for Collection at SJU and Use at SJU at a $3.00 PFC Level:

New domestic terminal building for group/cruise passengers—terminal A and conveyor.
Mitigation project for airport capital improvement program.
Puerto Rico interactive aviation system plan.

Brief Description of Projects Approved for Collection at SJU and Use at SJU at a $4.50 PFC Level:

Improve computer access system and control room.
Transportation Security Administration mitigtion and phase II commercial development.

Determination: Actual eligible construction costs were less than the amount requested.

Brief Description of Projects Approved for Collection at SJU and Use at SJU at a $3.00 PFC Level: Digital capital improvement program.

Determination: The request project included training, which was determined to be ineligible.

Brief Description of Withdrawn Project: Reconstruction of Kilo and associated aprons.

Date of Withdrawal: August 11, 2005.

Decision Date: October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331 extension 120.

Public Agency: San Diego Regional Airport Authority, San Diego, California.

Application Number: 05–04–C–00–SAN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $110,064,925.

Earliest Charge Effective Date: March 1, 2006.

Estimated Charge Expiration Date: April 1, 2009.

Class of Air Carriers not Required To Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Diego International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Taxiway B improvements.
Runway 9/27 improvements.
Re-seal portland cement concrete joints.
Airport security improvements.
Noise mitigtion.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Terminal improvements.
Construct interior consolidated baggage distribution facility.
Install airport-wide communications infrastructure.

Brief Description of Projects Approved for Collection at a $4.50 PFC Level: Rehabilitate taxiway C (C1–C4).

Decision Date: November 22, 2005.

FOR FURTHER INFORMATION CONTACT: George Buley, Western Pacific Region Airports Division, (310) 725–3617.

Public Agency: City of Santa Barbara, California.

Application Number: 05–04–C–00–SBA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,000,000.

Earliest Charge Effective Date: February 1, 2006.

Estimated Charge Expiration Date: December 1, 2007.

Class of Air Carriers not Required To Collect PFC's:

Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Santa Barbara Municipal Airport.

Brief Description of Project Approved For Collection and Use: Reconstruction of Portland cement and asphalt concrete aprons.

Decision Date: November 22, 2005.

FOR FURTHER INFORMATION CONTACT: Chuck McCormick, Western Pacific Region Airports Division, (310) 725–3626.

Amendment to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–03–C–02–BOI, Boise, ID	10/28/05	$75,631,748	$96,884,411	04/01/13	08/01/18
01–03–C–03–JNU, Juneau, AK	11/08/05	420,712	440,449	01/01/02	01/01/02

Issued in Washington, DC on December 21, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–24664 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Woodbury County, IA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revision to notice of intent.

SUMMARY: The FHWA issued a notice of intent to prepare an Environmental Impact Statement (EIS) for a proposed Interstate 29 corridor study in Sioux City, Iowa from Sioux Gateway Airport/Sergeant Bluff Interchange to the South Dakota State border, published on November 18, 2004, 69 FR 67618. The FHWA is issuing this notice to advise the public of a revision to the study corridor limits. The proposed Interstate 29 study corridor for which an Environmental Impact Statement will be prepared is defined as extending from approximately ¼ mile south of the Burlington Northern Santa Fe Railroad Bridge over the Missouri River to Judd Street along the existing Interstate 29 corridor in Sioux City, Iowa.

FOR FURTHER INFORMATION CONTACT: Mike LaPietra, Environment and Realty Manager, FHWA Iowa Division Office, 105 Sixth Street, Ames, IA, Ph. 515–233–7302; or James P. Rost, Director, Office of Location and Environment, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, Ph. 515–239–1225.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document is available for free download from the Federal Bulletin Board (FBB). The FBB is a free electronic bulletin board service of the Superintendent of Documents, U.S. Government Printing Office (GPO).

The FBB may be accessed in four ways: (1) via telephone in dial-up mode or via the Internet through (2) telnet, (3) FTP, and (4) the World Wide Web.

For dial-in mode a user needs a personal computer, modem, telecommunications software package and telephone line. A hard disk is recommended for file transfers.

For Internet access a user needs Internet connectivity. Users can telnet or FTP to: *fedbbs.access.gpo.gov.* Users can access the FBB via the World Wide Web at *http://fedbbs.access.gpo.gov.*

Comments or questions concerning this revision to the notice of intent issued on November 18, 2004 should be directed to the FHWA or Iowa Department of Transportation at the address provided in the caption **FOR FURTHER INFORMATION CONTACT**.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: December 20, 2005.

Gerald Kennedy,

Assistant Division Administrator, FHWA Iowa Division.

[FR Doc. E5–8101 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2005–23328

Implementation of the Highways for LIFE Pilot Program

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice; request for comments on proposed implementation of Highways for LIFE Pilot Program.

SUMMARY: This document contains the proposed implementation plan of Section 1502 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) for the Highways for LIFE (HfL) Pilot Program to offer the opportunity for comment into the development of the final implementation document. LIFE is an acronym for ''Long-lasting, Innovative, Fast construction of Efficient and safe pavements and bridges.'' The purpose of the HfL Pilot Program is to accelerate the rate of adoption of innovations and technologies, thereby improving safety and highway quality while reducing congestion caused by construction. This will be accomplished through technology transfer, technology partnerships, information dissemination, incentive funding of up to 20 percent, but not more than $5 million on Federal-aid highway projects (eligible for assistance under Chapter 1 of title 23, United States Code) and HfL program accountability.

DATES: Comments must be received on or before February 28, 2006.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dms.dot.gov* or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. 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.). Persons making comments 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 may visit *http://dems.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Bergeron, Office of Infrastructure, HIHL–1, (202) 366–5508; Mr. Michael Harkins, Office of the Chief Counsel, HCC–30, (202) 366–4928; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve online through the Document Management system (DMS) at: *http://dmses.dot.gov/submit.* The DMS is available 24-hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

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HfL Pilot Program

This notice presents the proposed implementation plan for the HfL Pilot

Program, as outlined in Sections 1101 and 1502 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), and it provides an opportunity for comment into the development of the final implementation document.

Reflecting on the condition of existing highways and the traditional processes used for building new ones, the American public has expressed, through national and local surveys, public meetings, and other means, a need for an improved driving experience. Elements such as reducing congestion in construction work zones, reducing construction time, a need for improved levels of safety and quality, and more cost effective approaches have become the subject of much concern.

Congress intended the HfL pilot program to incentivize the use of innovative technologies and practices with the expectation that safe, efficient highways and bridges can be built faster, and with greater durability. The legislation reflects an understanding that the best approach to improving the quality of the highway system is made by working through the individuals and organizations charged with designing, building, and operating it. HfL intends to create an atmosphere that encourages and enables the rapid adoption of innovations in the design, construction and operation of highways.

The HfL program has six program elements, which are discussed in detail below. These program elements are as follows: Technology transfer, technology partnerships, information dissemination, projects, funding, and accountability.

Technology Transfer

The key approach for improving the quality of the highway system is the application of existing but under-utilized, high payoff highway innovations, such as, equipment, techniques, processes, materials and management processes. The key to using these innovations is a knowledgeable workforce that is aware of the benefits and committed to improving the driving experience of all Americans.

The purpose of the technology transfer initiative is to train, inform, motivate, enable and equip the highway community workforce to more efficiently deliver projects that meet the HfL Pilot Program performance goals using the above mentioned innovations. Components of the technology transfer program may include technology training for public and private sector personnel, a knowledge exchange Web site where practitioners can log on and share ideas, technology workshops, and HfL project showcases demonstrating the actual use of the technology. The phrase, ''technology transfer'' has long been used to describe the process for taking such infrequently used innovations and making them standard approaches that a transportation agency is comfortable using on a day-to-day basis. Unfortunately, it has traditionally taken years or even decades to bring about such adoptions. This delay is not merely a factor of limited resources, workload, lack of awareness, and conservatism on the part of agency staffs, but also a lack of a standard concentrated approach for rolling out innovations. As part of the HfL program, a major effort will be undertaken to develop an improved technology transfer process to significantly speed the adoption of innovations. This improved technology transfer process will be piloted focusing on a few innovations.

Specifically, FHWA is proposing an innovation in each of the areas of safety, congestion and quality. These innovations need to be national in scope and have the potential for adding significant benefits to the highway community and highway users. The FHWA has already proposed three innovations that meet the HfL criteria: Prefabricated Bridge Systems and Elements; [1] Road Safety Audits; [2] and ''Making Work Zones Work Better.'' [3] Focusing on these three innovations does not mean that they are requirements for any proposed HfL-funded project. On the contrary, as outlined later in this document, any innovation that addresses the HfL performance goals may be used in an HfL-funded project.

Additional technology transfer efforts would be provided by the HfL program through an innovations workshop for each HfL-funded project. The workshop may be similar in scope and structure to the Accelerated Construction Technology Transfer [4] workshops sponsored by the American Association of State Highway and Transportation Officials (AASHTO) and FHWA.

Technology Partnerships

Within the HfL Pilot Program, Technology Partnerships are intended to foster the development, improvement and creation of innovative technologies and facilities, including the use of proprietary products, technologies or methodologies. Due to limited resources, the FHWA intends to focus this element of the HfL program on refining and improving existing innovations for application on highway construction. The FHWA would enter into either a grant or cooperative agreement with public or private organizations to jointly fund or otherwise participate in adapting and/or making market-ready innovations to support the HfL Pilot Program. These agreements may be with traditional partners in the highway construction business or other organizations outside of the highway industry, which have promising innovations that can be made ready for timely implementation.

The HfL Technology Partnerships have a two-fold purpose: First, they are intended to foster the implementation of under-utilized innovations that will improve the safety, speed of highway construction, quality, cost effectiveness, and durability of pavements and bridges. Second, they provide an opportunity for those not involved in construction of the HfL projects aspect of the program to participate in, contribute to, and benefit from the program.

The HfL Technology Partnerships would provide financial impetus needed to move some of the many proven but underutilized innovations and methods into routine practice in the highway industry. Innovations brought forward through the technology partnerships may be used in the HfL Projects and promoted through HfL technology transfer and information dissemination.

To be considered for participation, the innovation must have been used successfully in highway, transportation, or in some related venue which has a clear potential for successful use in the United States highway industry.

A detailed approach to technology partnerships has not yet been developed because this is an area where stakeholder and industry input is needed. Due to the desire to obtain input, as well as the lower level of funding in the first year of the HfL program, it is proposed that funding for Technology Partnerships would begin in fiscal year 2007. However some deviations may be necessary, since the HfL technology partnerships effort focuses on proven technologies, rather than research. The FHWA is interested in feedback on approaches to technology partnerships.

[1] For more information on Prefabricated Bridge Elements and systems go to: *http://www.fhwa.dot.gov/bridge/prefab/.*

[2] For more information on Road Safety Audits go to: *http://safety.fhwa.dot.gov/index.htm.*

[3] For more information on ''Making Work Zones Work Better'' go to: *http://www.ops.fhwa.dot.gov/wz/index.asp.*

[4] For more information on ACTT go to: *http://www.fhwa.dot.gov/construction/accelerated.*

Information Dissemination

An essential component of transferring technology is information dissemination, including the communication of the HfL goals, concepts and services. Communicating the HfL story is critical for several reasons: First, without a high level of communication, there would be no ''technology transfer;'' innovative approaches would remain with those people who initially employed them. Secondly, recounting others' successes tends to instill within organizations a higher level of competition and peer-pressure to keep up with the rest of the community.

Although Information Dissemination is a major element of Technology Transfer, the importance of this communication element within the overall HfL Pilot Program is sufficient to create a separate category of activities. One key reason is that others, outside the primary audience of individuals and organizations who design, build, and operate the nation's highways, need to be informed as well about safer, less congested and improved quality highways and bridges. The driving public, for example, needs to be a key recipient because they are the ultimate beneficiaries of the overall effort. Providing the information starts the dialog to ensure that activities undertaken within the program really are pertinent to improving the public's driving experience. Finally, the public needs to be informed because public opinion can be a major motivator to getting individuals and organizations who are slow to adopt innovations to move faster. Telling the public about the highway community's push for better roads and the HfL projects builds goodwill and shows an appropriate level of responsiveness to the public's need. It demonstrates that the highway community is being a good steward of the public trust. It also has the potential to show highway builders the benefits of using HfL approaches on more of their projects.

A key tool for information dissemination would be the publicizing HfL success stories, showing how innovation can improve safety, reduce construction-related congestion, and improve quality, and why it is beneficial to pursue non-traditional approaches and innovations.

Communication tools such as publications, videos, special events, media relations, the Internet, and a web-based Community of Practice can be employed in getting information on the various elements of the HfL program to different audiences. Specifically, those audiences may include the highway community, academia, associated industries and private sector groups, schools, elected officials, media, and the public in general.

Another facet of information dissemination will be publicizing the success of each of the HfL demonstration projects. This will be accomplished at the local, regional and national levels and will be done during and after construction. The focus in publicizing the HfL project success stories will be on the innovations, the resulting benefits and the people in the State DOT, Industry and Division Office that made it happen. One technique may be the establishment of an annual awards program and celebration for the HfL projects. Another technique would be a ribbon cutting ceremony for the HfL project. Additionally, HfL can work with other organizations such as the national Partnership on Highway Quality, industry associations, American Automobile Association, American Trucking Associations, State DOT Public Affairs offices in publicizing HfL projects and the people involved in constructing the projects. Positive information dissemination coupled with recognition will be used as a means to perpetuate the behavior and outcomes achieved on the HfL projects.

Projects

While training such as that outlined previously in the technology transfer section is important, the challenge is to get the transportation professional to put that training to use on an actual project. Such on-the-job experience will be provided through the Projects activity of the HfL program. State transportation agencies will be asked to submit applications to the FHWA Division Offices for HfL incentives for specific projects where it intends to employ innovations that it was not used or rarely used in its State.

Funding construction projects within the HfL program will allow for detailed documentation of the potential improvements in safety, construction-related congestion and quality that can be achieved through the application of innovations on actual projects. It may also serve as a new business model for how a State manages its highway project delivery process. The demonstration will involve showing the highway community and the public how the HfL projects are designed, built, and perform. Widespread demonstration of successes will, in turn, provide the impetus for more widespread application of the performance goals and innovations in the future.

Performance Goals

Paragraphs (a)(3) and (b)(4)(A) of Section 1502 of SAFETEA–LU makes reference to ''performance standards.'' In the HfL program, the term ''performance standards'' are also synonymous with ''performance goals,'' which define the desired end result to be achieved on the projects. The FHWA has selected performance goals to put the emphasis on the highway motorist's needs, to foster the acceptance and adoption of innovations, and to reinforce the need to address all goals—safety, congestion, user satisfaction, and quality—in every project. The individual HfL performance goals would be set at levels representing the best the highway community has and is able to produce.

In proposing performance goals for HfL projects, the FHWA considered whether a candidate goal has a highway community accepted definition, metric, measure, method, procedure, process and/or equipment. Candidate goals were evaluated with these considerations since it is expected that the State and its contractor(s) will be monitoring the goals for the design and/or construction of HfL projects.

It is FHWA's intention that the approved HfL projects would include the Performance Goals in each of the goal areas. The performance goals being considered for the first year of HfL projects include:

Safety

- Work Zone Safety During Construction—work zone crash rate of 20 percent less than State-wide average;
- Worker Safety During Construction—worker injury rate of 20 percent less than the most recent national average;
- Facility Safety After Construction—20 percent reduction in fatalities and injuries as reflected in 3-year average crash rates, using pre-construction rates as the baseline.

Construction Congestion

- Faster Construction—reduce by 50 percent the duration that highway users are impacted by construction as compared to traditional methods;
- Trip Time During Construction—less than 10 percent reduction in the average pre-construction speed using 100 percent sampling; or
- Queue Length During Construction—the line of vehicles passing through the construction work zone should be less than 0.5 mile long for traveling speeds less than 10 mph, or less than 1.5 miles long for traveling at speeds 20 percent or less than the posted speed limit.

Quality

• Smoothness—an inertial Profile, International Roughness Index (IRI) of less than 48 inches/mile.

• Noise—a close Proximity (CPX) noise measurement of less than 96.0 decibels.

User satisfaction

• User satisfaction—project construction surveys will be used to determine user satisfaction in two areas: (1) How satisfied the user is with the new facility, compared with its previous condition, and (2) how satisfied the user is with the approach used to construct the new facility in terms of minimizing disruption. A five-point Likert scale [5] will be used for measurement, and the goal for each area will be 4+. [6]

The FHWA is interested in feedback concerning the following specific aspects of application of the HfL performance goals:

• Should the performance goals be adjusted to consider project factors such as class of road, traffic volume, cost of the project, size of the project, current project conditions as related to safety, congestion and quality?

• Should the performance goals be adjusted to consider State DOT factors such as the current statewide average conditions for safety, construction congestion and quality, the current statewide average conditions for that class of road, or the current design standards and construction specifications?

Solicitation

An annual solicitation for HfL projects is planned for the Spring of 2006. The FHWA intends to publish a notice in the **Federal Register** requesting submittal of project applications. It is anticipated that a project solicitation will also be done in 2007, 2008 and 2009. Additionally, the announcement would be publicized through various other means, including posting on the World Wide Web, providing facilitation by the FHWA Division Offices, and through other outreach to the States. The State DOT would submit applications electronically to their FHWA Division Office. The application, along with FHWA Division recommendation would then be forwarded to FHWA headquarters.

[5] For more information on the Likert scale go to: *http://en.wikipedia.org/wiki/Likert_scale.*

[6] A typical question using a Likert scale poses a statement and ask the respondent whether he strongly agrees–agrees–is undecided–disagrees or strongly disagrees.

Eligibility Criteria

Section 1502(b)(2) of SAFETEA–LU establishes the eligibility criteria for a project's participation in the HfL pilot program. The eligibility criteria includes:

• The project must construct, reconstruct, or rehabilitate a route or connection on a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code; and

• The project must use innovative technologies, manufacturing processes, financing, or contracting methods that improve safety, reduce congestion due to construction, and improve quality.

Application Requirements

Section 1502(b)(1) of SAFETEA–requires States to submit an application to the Secretary in order for a project to participate in the HfL pilot program. This application must contain the following information:

• An identification and description of the project, including when the project will be ready for construction;

• An identification and description of the specific performance goals that are proposed for the project;

• A description of the innovative technologies, manufacturing processes, financing, and contracting methods that will be used for the proposed projects;

• A description of how the project will result in improved safety, reduced congestion due to construction, improved quality and user satisfaction; and

• Whether the State is willing to (a) participate in subsequent technology transfer and information dissemination activities associated with the project(s). Examples of such activities include conducting an ''open house'' for highway practitioners on the project, providing information to the FHWA for success stories, and providing briefings to the FHWA and general public on the success of the technology and process used; (b) provide information needed by HfL to evaluate the project and innovations (costs incurred as a result of supplying this information to FHWA would be an eligible project expense); and (c) accept FHWA Division Office oversight if the project is approved by HfL.

Project Selection and Evaluation

Section 1502(b)(4) of SAFETEA–LU establishes the selection criteria for approving projects for participation in the HfL pilot program. This criteria requires the Secretary to give priority to projects that:

• Address achieving the HfL performance goals for safety, construction congestion, quality and user satisfaction;

• Deliver and deploy innovative technologies, manufacturing processes, financing, contracting practices, and performance measures that will demonstrate substantial improvements in safety, congestion, quality, and cost-effectiveness;

• Include innovation that will lead to change in the administration of the State's transportation program to more quickly construct long-lasting, high-quality, cost-effective projects that improve safety and reduce congestion; and

• Are or will be ready for construction within one year of approval of the project application. For purposes of the HfL program, the FHWA considers a project to be ''ready for construction'' when the FHWA Division Office concurs in awarding the project.

In addition, the Secretary will also give priority to projects where the State demonstrates a willingness to participate in subsequent technology transfer and information dissemination activities associated with the project(s).

HfL project applications will be evaluated and recommendations for selection made to the Secretary of Transportation. The evaluation committee will be composed of FHWA staff who will evaluate project applications based on the priorities noted above.

Number of Projects

Section 1502 establishes a maximum of 15 projects per year that may receive HfL funding. In considering such factors as the purpose and scope of the program available funding and the various associated costs and activities needed for each HfL construction project to contribute to the desired outcome, it is proposed that the total number of HfL projects be kept at 15 per year, with the understanding that FHWA may consider adding projects to take advantage of unique opportunities.

Funding

SAFETEA–LU, Section 1101(a)(20) established total program funding at $75,000,000 through 2009, including $15,000,000 for fiscal year 2006, and $20,000,000 for each of fiscal years 2007 through 2009. This funding includes incentive grants of up to 20 percent, but not more than $5 million of the total cost of qualifying demonstration projects. A maximum of 15 projects may receive incentive funds in any fiscal year. Up to 100 percent Federal share is also allowed on HfL demonstration projects. There is a goal of providing funds for at least one project in each

State by 2009. A State may also use up to 10 percent of its National Highway System, Surface Transportation Program, Congestion Mitigation and Air Quality Improvement or Interstate Maintenance funds for HfL eligible projects as matching funds up to 100 percent in any fiscal year. Based on the level of incentive funding provided in SAFETEA-LU, it is anticipated that individual project funding levels will be in the $500,000 to $1,000,000 range per project.

Spending Plan

The majority of the 2006 HfL funding, in the order of 60 percent, will be used for projects; a significant portion of the funds, approximately 30 percent, will be used for technology transfer and the remainder of the funds would be expended on technology partnerships, information dissemination and stakeholder input and involvement. This approximate distribution of funds includes the costs for monitoring and evaluation for each element. The HfL spending plan will be evaluated yearly and adjusted accordingly.

Accountability

As a means of ensuring appropriate stewardship of public funds, the HfL program will include several monitoring and evaluation efforts to measure the effectiveness of the program and projects, as well as stakeholder input and involvement procedures. Although the individual activities within the HfL program will require extensive effort and funding, there will need to be measurements beyond the basic levels of success or failure of those activities taken individually. The higher level of evaluation should reflect the primary objective of the program as a whole: to improve the highway system as indicated by measurement of safety, construction congestion, quality and user satisfaction on HfL projects.

Monitor and Evaluation

The FHWA has the lead for monitoring and evaluation of HfL projects, and would be responsible for data collection, data storage and access, analysis, and reporting. FHWA personnel and private contractors will be used for this function. The owners of HfL-funded projects would supply or provide access to data and information. Costs associated with these activities are an eligible project expense. The FHWA Division Offices would serve as points of contact and coordination between the FHWA's contractor(s) and the State.

The monitoring and evaluation effort will be used to fully describe and quantify the outputs, results, and outcomes in the goal areas and to provide an assessment of the benefits derived from the overall investment. A cost effective economic analysis on HfL projects will be conducted by the FHWA HfL using economic techniques for measuring and valuing user cost; this might include but not be limited to Event-Only Analysis, Life Cycle Cost Analysis or Benefit-Cost Analysis. The resulting information would serve as a resource to highway program decision makers on the value of the innovations demonstrated in the HfL projects, help maintain the momentum needed to achieve the HfL goals, demonstrate the value of the entire pilot program, and provide the basis for projecting the benefits gained from expanding such an approach in the future.

The monitoring and evaluation element would encompass the entire HfL program. For the HfL projects, information collected prior to, during, and immediately after construction would include a full array of highway condition, financing, design, contracting, construction, operations, and safety data, as well as user statistics and opinions. The costs, outcomes, impacts, and benefits of the technology partnerships would also be fully documented. To the extent possible, information collected for the technology transfer and information dissemination aspects would include objective measures of the effectiveness and impact of the individual activities that are undertaken, in addition to information on the costs of those activities. The information gathered on the HfL projects, technology transfer and technology partnerships will also be used in research and development for the next generation of technologies and innovations and future technology transfer initiatives.

Stakeholder Input

The HfL stakeholders include highway owners, builders, suppliers, consultants, academicians, users (commercial motor carriers, motorists, bicyclist, and pedestrians), and those impacted secondarily by highways (neighbors and adjacent landowners, receivers of goods shipped over highways). Through stakeholder input and involvement, the FHWA desires to refine the approach and implementation of the HfL program as well as to build ownership for the program. Stakeholder input and involvement will be an ongoing element of the HfL program in order to evaluate the progress of the program, consider appropriate redirection in light of progress, and assess of the overall program results. Stakeholders would have opportunities to provide input on both the HfL Implementation plan, and the conduct of the program itself, including:

- The HfL performance goals;
- Applicable technologies and practices;
- Technology partnerships approaches; and
- Evaluation of HfL outcomes and benefits including demonstration projects, technology partnerships, technology transfer and information dissemination.

The FHWA is considering several stakeholder input and involvement approaches for the HfL program. Providing information and soliciting feedback would happen routinely through notices published in the **Federal Register,** presentations at highway town hall meetings or regional forums, and the establishment of a web-based communications interchange site, or ''Community of Practice'' on the HfL Internet Web site *http://www.fhwa.dot.gov/hfl/.*

(Authority: Public Law 109–59 Section 1502, 23 U.S.C. 502 and 23 U.S.C. 315)

Issued on December 23, 2005.

J. Richard Capka,

Acting Federal Highway Administrator.

[FR Doc. E5–8107 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–23433]

Notice of Receipt of Petition for Decision That Nonconforming 2000–2005 Komet Standard, Classic and Eurolite Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000–2005 Komet Standard, Classic and Eurolite trailers are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000–2005 Komet Standard, Classic and Eurolite trailers that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were

certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 30, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS of Aberdeen, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether nonconforming 2000–2005 Komet Standard, Classic and Eurolite trailers are eligible for importation into the United States. The vehicles which U.S. SPECS believes are substantially similar are 2000–2005 Komet Standard, Classic and Eurolite trailers that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2000–2005 Komet Standard, Classic and Eurolite trailers to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 2000–2005 Komet Standard, Classic and Eurolite trailers, as originally manufactured, conform to the FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that 2000–2005 Komet Standard, Classic and Eurolite trailers are capable of being altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation, on vehicles not already so equipped, of (a) tail lamps; (b) rear side marker lamps; and (c) front side marker lamps. The wiring system must also be modified.

Standard No. 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars:* Installation, on vehicles not already so equipped, of tires that conform to the requirements of this standard.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* Installation, on vehicles not already so equipped, of (a) a tire information placard; and (b) rims that conform to the requirements of this standard.

The agency notes that the subject trailers are not equipped with braking systems. As a consequence, there is no need for the petition to discuss the vehicle's compliance with any of the brake standards that apply to trailers that are so equipped.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E5–8130 Filed 12–29–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34779]

V & S Railway, Inc.—Acquisition and Operation Exemption—Rail Line of Colorado, Kansas & Pacific Railway Company

V & S Railway, Inc. (VSR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire (by lease) from Colorado, Kansas & Pacific Railway Company (CKPR) approximately 121.9 miles of rail line between milepost 747.5, near Towner, CO, and milepost 869.4, near NA Junction. VSR states that it has reached an agreement with CKPR and the Colorado Department of Transportation (CDOT) for VSR to be the assignee of the lease between CDOT and CKPR,[1] pursuant to which VSR will acquire by lease and operate the line.

VSR certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

Consummation was scheduled to take place on or after December 9, 2005, the date the exemption became effective (7 days after filing).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34779, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW., (8th fl.), Washington, DC 20036–1601.

[1] The Board approved the lease between CDOT and CKPR in *Colorado, Kansas & Pacific Railway Company—Lease, Operation, and Future Purchase Exemption—Colorado Department of Transportation*, STB Finance Docket No. 33857 (STB served Apr. 7, 2000).

Board decisions and notices are available on our Web site at *http:www.stb.dot.gov*.

Decided: December 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E5–7699 Filed 12–29–05; 8:45 am]

BILLING CODE 4915–01–P



Federal Register

Friday,

December 30, 2005

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–22093]

RIN 2127–AJ75

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Our safety standard on lamps, reflective devices, and associated equipment specifies performance requirements intended to reduce the incidence of vehicle crashes by providing adequate illumination of the roadway and by enhancing motor vehicle conspicuity in daylight, darkness, and other conditions of reduced visibility. As a result of various safety initiatives and technological advances in vehicle lighting, numerous amendments to the regulatory text have left the standard unwieldy and unnecessarily complicated. In addition, the standard's provisions have been interpreted frequently by the agency over the past several decades in response to interpretation request letters. This document proposes to amend the standard by reorganizing the regulatory text so that it provides a more straight-forward and logical presentation of the applicable regulatory requirements, which includes the agency's interpretation of the existing requirements. This proposal would not impose any new substantive requirements on manufacturers.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than March 30, 2006.

ADDRESSES: You may submit comments identified by the DOT Docket Number cited in the heading of this document by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 7th Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401, 400 7th Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues: David Hines, Office of Crash Avoidance Standards (NVS–121), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. (Telephone: (202) 493–0245) (Fax: (202) 366–7002).

For legal issues: Eric Stas, Office of the Chief Counsel (NCC–112), NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: (202) 366–2992) (Fax: (202) 366–3820).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
II. Background
  A. Historical Overview of the Standard
  B. The Need for an Administrative Re-write of the Standard
III. Agency Proposal
  A. Summary of the Proposal
  B. Process for Developing the Administrative Re-write
  1. Review of Existing Regulatory Text
  2. Review of Existing Interpretation Letters
  3. Structure of the Revised Standard
  4. Incorporations by Reference
  C. Effective Date
IV. Benefits and Costs
V. Public Participation
VI. Rulemaking Analyses and Notices

I. Executive Summary

The agency is proposing to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices, and associated equipment,* by reorganizing the regulatory text and directly importing requirements from applicable Society of Automotive Engineers (SAE) standards currently incorporated by reference into the standard. The main objective of this re-write is to increase clarity by: (1) Making requirements easier to find and comprehend; (2) presenting performance requirements and test procedures together through the inclusion of relevant provisions of third-party documents (currently incorporated by reference) directly into the regulatory text of the standard; and (3) updating Standard No. 108 to reflect letters of interpretation.

The re-write of FMVSS No. 108 is considered to be administrative in nature because the standard's existing requirements and obligations are not being increased, decreased, or substantively modified. Accordingly, costs associated with manufacturer compliance with Standard No. 108 are not expected to change as a result of this regulatory action.

II. Background

A. Historical Overview of the Standard

The initial version of FMVSS No. 108 was adopted almost 40 years ago [1] to increase motor vehicle safety by establishing requirements for vehicle lighting, reflective devices, and associated equipment. In developing the standard, NHTSA incorporated requirements from a number of industry consensus standards, in particular SAE standards. At that time, motor vehicle technologies were relatively simple, as compared to today's designs. For example, motor vehicle headlighting systems were limited to ones consisting of either two 7-inch or four 5¾-inch round sealed beam units. During the ensuing years, a number of rectangular sealed beam units, replaceable bulb headlamps, and integral beam headlamps were developed, and FMVSS No. 108 was amended to permit the use of these new technologies. Later, the standard was further amended to add requirements for center high-mounted stop lamps, side marker lamps, and side reflex reflectors, to allow for daytime running lamps, and to address the conspicuity needs of large vehicles. However, such amendments were made on an *ad hoc* basis, which, over time, resulted in a patchwork organization for FMVSS No. 108.

Furthermore, when regulated parties had questions regarding how FMVSS No. 108 should be interpreted (in many instances due to rapid advances in lighting technology not fully anticipated or addressed by the existing regulatory text), they submitted requests for interpretation to the agency on specific issues. Since its promulgation, there has been a large number of interpretation letters issued on FMVSS No. 108. Thus, in its current state, FMVSS No. 108 has

[1] The final rule which first promulgated FMVSS No. 108 was published on February 3, 1967, with an effective date of January 1, 1968 (*see* 32 FR 2408).

requirements that are located directly in its regulatory text, located in referenced SAE standards, and elaborated upon in various agency interpretations. Since its inception, NHTSA has never completed a thorough reorganization of the entire standard.

B. The Need for an Administrative Re-write of the Standard

Due to concerns about being able to locate requirements efficiently and the apparent lack of clarity associated with the standard as demonstrated by an abundance of letters of interpretation, we have decided to undertake an administrative re-write of FMVSS No. 108. The agency has also received complaints that the current text of FMVSS No. 108 sometimes results in confusion, in part due to the way it is organized. In present form, FMVSS No. 108 does not group all requirements for a particular lamp together. Regulated parties have stated that the current organization of FMVSS No. 108 makes it difficult for them, at times, to be fully confident that all applicable requirements have been identified and satisfied prior to certification to the standard. Also, the large number of interpretations that has been issued by the agency regarding Standard No. 108 makes it difficult for interested parties to locate and identify the agency's position on relevant issues. In addition, regulated parties have conveyed to the agency in recent years that some of the older SAE standards incorporated by reference into FMVSS No. 108 are no longer readily available from SAE International.

The agency believes that interested parties should have easy access to the requirements of the standard, and, therefore, we believe there would be value in publishing requirements that are currently contained in third-party documents directly within FMVSS No. 108 itself. For example, the performance requirements and associated test procedures for various lamps are currently contained in several referenced SAE standards. However, the agency believes it would be beneficial to incorporate these requirements, without change, directly into the regulatory text of FMVSS No. 108. The same logic applies to our decision to propose including the results of relevant legal interpretations into the standard. Furthermore, several provisions in Standard No. 108 refer to regulatory inception dates that are several years in the past, so the agency is proposing to eliminate text citing such past dates.

For these reasons, we believe that the benefits of an administrative re-write of FMVSS No. 108 (*e.g.*, making the standard more navigable and thereby facilitating compliance with existing requirements) justify the necessary commitment of agency resources to accomplish this reorganization of the standard.

III. Agency Proposal

A. Summary of the Proposal

The agency is proposing to reorganize FMVSS No. 108 in such a manner as to make it more understandable (*e.g.*, by adopting a simplified numbering scheme) and to reduce references to third-party documents. This administrative re-write attempts to organize related materials in a logical and consistent manner that improves the clarity of the requirements, thereby increasing its utility for interested parties. As proposed, the reorganized standard would progress from vehicle-level requirements to device-level requirements, beginning with the most common requirements and then proceeding to exceptions. In order to make requirements easier to find, we are proposing to add a Table of Contents as an appendix to the standard. In addition, a list of figures and cross-reference roadmaps are included as a part of this proposal in order to indicate where specific requirements currently in FMVSS No. 108 would reside in the reorganized regulatory text of the standard.

This document also proposes to move figures addressing sealed beam headlamps that are currently included in FMVSS No. 108 and SAE J1383 (APR 1985) into 49 CFR Part 564 as a newly-created Appendix C. Consistent with our understanding that few lighting manufacturers still produce sealed beam headlamps, we see few drawbacks to consolidating the information regarding sealed beam light sources with other light source information currently located in 49 CFR Part 564, *Replaceable Light Source Information.*

By way of overview, requirements in the proposed re-write of FMVSS No. 108 are consolidated into dedicated paragraphs. The first several paragraphs (S1 through S4) would be organized in the same manner as the present standard, although we note that S4, *Definitions,* has been expanded to incorporate relevant definitions from the applicable SAE standards previously incorporated as part of Standard No. 108. S5 would address the remaining references to SAE standards.

Whereas Standard No. 108 currently references approximately 35 different SAE documents in nearly 100 separate instances, the proposed re-write references eight SAE documents, which we believe will not be commonly used by regulated parties. Performance requirements and physical and environmental test procedures currently located in SAE standards, including but not limited to SAE J575d (Aug 1967), SAE J 575e (Aug 1970), SAE J575 (Dec 1988), SAE J565b (Feb 1969), SAE J580 (Dec 1986), SAE J565b (Feb 1969), SAE J590b (Oct 1965), and SAE J945 (Feb 1966), have been included in Tables XXI to XXIII of FMVSS No. 108 as part of the proposed re-write. To the extent possible, the proposed re-write limits the amount of references within the regulatory text to other sections of the standard.

As an organizational improvement, the proposal addresses vehicle-level requirements in S6, including requirements by vehicle type. Following that, requirements are organized with dedicated sections for each type of lamp and reflective device, beginning with signal lamps, reflective devices and associated equipment under S7 and headlamp and headlighting requirements under S8 through S13, and S16 through S18. S14 addresses aimability performance requirements, while S15 covers replaceable light sources (including references to Part 564). The agency believes this format would make the standard more comprehensible and user-friendly.

From a regulatory perspective, it is our intention that this administrative re-write of Standard No. 108 would neither result in any current obligation being diminished, nor any new obligation being imposed. Therefore, we do not believe that vehicle manufacturers and lighting manufacturers would have to make any changes to their respective products or production processes if this proposal were made final. Accordingly, we are proposing to make the proposed revisions effective 180 days after publication of the final rule. Voluntary early compliance with the reorganized standard is proposed to be permitted immediately, although the substantive requirements are identical under both versions.

B. Process for Developing the Administrative Re-Write

1. Review of Existing Regulatory Text

The agency began this administrative re-write process by reviewing the existing regulatory text of Standard No. 108, including requirements that are currently incorporated by reference from SAE standards. During the course of this extensive review, it became apparent that FMVSS No. 108 could be organized in a more efficient manner. We noted that, in many instances,

requirements for a specific lamp are located throughout FMVSS No. 108. In many cases, the regulatory text of the standard references other sections within the standard, which made review cumbersome. In other cases, FMVSS No. 108 contains specific performance requirements but does not contain the applicable test procedure (which is located in the cited SAE standard); the agency noted it would be much easier to simultaneously review both the test procedures and performance requirements if that information were consolidated in one location, in contrast to the current arrangement.

2. Review of Existing Interpretation Letters

Because there have been over two thousand interpretation letters issued by the agency regarding FMVSS No. 108 since the standard was initially implemented, we attempted to identify the most significant ones. The criteria used in determining whether an interpretation was significant focused on whether it provided value in clarifying the provisions in the standard. In the vast majority of cases, requests for interpretation have identified questions regarding applicability of certain provisions to specific design configurations. These interpretations were not included, because we tentatively concluded they would not add value to the regulatory text.

Using this approach, in order to clarify the current requirements of FMVSS No. 108, the re-write proposal contains text from the following key interpretation letters (each of which is briefly described in the following paragraphs), to Mr. Alkire [2] (11/28/89), Mr. Camp [3] (6/17/97), Mr. Clarke [4] (7/28/05), Mr. Farber [5] (5/26/00), Mr. King [6] (7/12/00), Mr. Parkyn [7] (6/1/98), and Mr. Spingler (7/2/99 [8] and 4/6/00 [9]). (Each of these interpretations is discussed below, although only to the extent necessary to describe the key principle(s) being incorporated as part of the administrative re-write of FMVSS No. 108.) It also reflects our notice of interpretation concerning replacement equipment published in the **Federal Register** (70 FR 65972) on November 1, 2005. The agency invites input from interested parties regarding additional interpretations that they believe should be included in the final rule for this administrative re-write, including identification of the interpretation, specific text to consider, and the applicable paragraph of the re-write where it should be added.

The Alkire interpretation addressed questions regarding modifications that may take a vehicle out of compliance and what parties are prohibited from making such modifications. It states, ''This standard [FMVSS 108] must be met when the vehicle is manufactured, and when it is sold to its first purchaser (i.e., dealer-installed equipment must not affect compliance of the vehicle with the safety standards).'' Because dealers are increasingly involved in installing equipment and accessories to vehicles before they are initially sold and those items usually raise obstruction issues, explicit language was incorporated in S6.2.2 of this proposal to address obstruction.

The Camp interpretation established that running boards are considered substantially similar to other items of equipment such as signal lamps, marker lamps, outside rearview mirrors, flexible fender extensions, mud flaps, and outside door handles, and thus should be likewise excluded from the definition of ''overall width'' that currently resides in obscurity as footnote 1 to Table IV of Standard No. 108. All definitions specific to FMVSS No. 108 are located in S4 of this proposal, including ''overall width.'' Adding running boards to that definition consolidates all exclusions and clarifies the requirement.

The Clarke interpretation responded to a request to clarify how close auxiliary lamps may be mounted to required identification lamps to avoid impairment. FMVSS No. 108 requires that the three lamps that make up the identification lamp cluster be spaced from 6 to 12 inches apart. This unique appearance serves as a signal to other drivers that the vehicle, so equipped, is a large vehicle. Therefore, our interpretation letter stated that in making an impairment determination, the agency considers how close the identification lamps are spaced to each other, as well as to the auxiliary lamps. In that letter, the agency stated that positioning auxiliary lamps at a distance that is at least twice the distance that separates each lamp in the required three-lamp cluster provides sufficient separation not to impair the effectiveness of the three lamp cluster. This language was included in S6.2.5 of this proposal. In addition, the Clarke interpretation also emphasized that auxiliary lamps must be designed to comply with the photometric output and be of the same color as required lamps to avoid impairment. This requirement is contained in S6.2.3 of this proposal to add clarity.

The Farber interpretation addressed the issue of what actions are permitted to cause the stop lamps to illuminate. The current explicit language in FMVSS No. 108 requires that stop lamps illuminate ''upon application of the service brakes.'' In this interpretation letter, NHTSA discussed the fact that any item of vehicle equipment that diminishes the speed of a vehicle beyond normally achievable coast-down deceleration creates an appearance to a following driver equivalent to that of a service brake application. Therefore, it would be permissible for the stop lamps to be illuminated when a device such as an engine retarder, transmission downshifting device, or similar item acts to slow the vehicle, because such illumination would not create any confusion in the mind of a following driver and thus would not ''impair the effectiveness'' of the required stop lamps. Accordingly, this proposal states in S6.1.5.1 (*Stop lamp activation*): ''Each stop lamp may also be activated when the vehicle is slowed by a device designed to retard the motion of the vehicle.'' This language also appears in each of the three ''Stop Lamps'' rows in the ''Device Activation'' column of Table I.

The King interpretation concerned lamp systems (such as stop lamps, turn signal lamps, and taillamps), that consist of two closely mounted lamps, one of which is mounted on the outer edge of the deck lid and the other mounted adjacent on the rear quarter panel. The photometric requirements for stop lamps, rear turn signal lamps, and taillamps must be determined based upon how many such individual lamps or individual lighted sections in a single lamp are present. In the situation described in the King interpretation, there were two discrete, physically-separate lamps each having a portion of the total stop, turn signal, and tail function for one side of the vehicle. Mr. King asked whether both functions, when considered together, must be designed to comply with the two-lighted-section photometry requirement for that function, or whether the lamp mounted on the rear quarter panel must be designed to comply with the single-lighted-compartment photometric requirement for that function. NHTSA confirmed that in the situation described, the lamp that is mounted on the rear quarter panel is the one that must be designed to comply with FMVSS No. 108 because it will be visible at all times. In contrast, the lamp

[2] *http://isearch.nhtsa.gov/files/2169y.html.*
[3] *http://isearch.nhtsa.gov/files/15309.ztv.html.*
[4] *http://isearch.nhtsa.gov/files/GF002551.3.html.*
[5] *http://isearch.nhtsa.gov/files/21341.ztv.html.*
[6] *http://isearch.nhtsa.gov/files/21605.ztv.html.*
[7] *http://isearch.nhtsa.gov/files/17690.ztv.html.*
[8] *http://isearch.nhtsa.gov/files/19548.ztv.html.*
[9] *http://isearch.nhtsa.gov/files/21406.ztv.html.*

mounted to the deck lid would be considered supplemental lighting equipment because it could be out of design position if the vehicle is operated with the lid open. In order to clarify FMVSS 108's requirements in such situations, S6.1.3 (Mounting location and height) of this proposal includes the following sentence: ''When multiple lamp arrangements of or multiple compartment rear turn signal lamps, stop lamps, or taillamps are used, with only a portion of the compartments or lamps installed on a fixed body panel of the vehicle, that portion must meet at least the photometric requirements for the appropriate single compartment lamp.''

The Parkyn interpretation responded to a request for clarification regarding photometric requirements for stop lamps installed on motor-driven cycles. Regarding such lamps, the applicable section of the current version of FMVSS No. 108 states the required photometric output ''for the group of test points specified in Figure 1 is at least one-half of the minimum values set forth in that figure.'' The process of determining the photometric requirements for parking lamps, taillamps, and motor-driven cycle stop lamps in FMVSS No. 108 is a multi-step procedure requiring a calculation based on values found in Figures 1A, 1B, and 1C. NHTSA stated the result of the proper calculation for a single lighted section motor-driven cycle stop lamp was 26 candela in Zones 1 and 5, 50 candela in Zones 2 and 4, and 190 candela in Zone 3. To simplify this requirement, this proposal has obviated the need for such calculations by eliminating the content of Figures 1A, 1B, and 1C, choosing instead to place the specific photometric values into new Table XIV for parking lamps, Table VIII for taillamps, and Table IX for stop lamps. Footnote 5 of Table IX specifically notes the portion that applies to motor-driven cycle stop lamps.

The letter of interpretation issued to Mr. Spingler on July 2, 1999 responded to a request for clarification as to whether there are any lateral limits on headlamp lower beam photometry in the area from 10°U to 90°U. Currently, FMVSS No. 108 Figures 15–1, 15–2, 17–1, 17–2, 28–1, and 28–2, which address lower beam headlamp photometry, require a maximum of 125 candela in the area of 10°U to 90°U but do not cite any lateral limits in that area. In our interpretation to Mr. Spingler, NHTSA stated, ''The Figures do not state where in space from left to right to locate the vertical line, and thus, they do not specify that a line is to be measured. It follows that the only description of a set of test points is that of the entire area from 90L to 90R and 10U to 90U, i.e., an area from the extreme left of the test point grid to the extreme right of the test point grid, with an elevation of from 10U to 90U.'' This requirement has been explicitly incorporated in Table XIX of this proposal, which specifies lateral limits of 90°L to 90°R in the area of 10°U to 90°U.

The letter of interpretation issued to Mr. Spingler on April 6, 2000 concerned the procedure for measuring the cut-off parameter in a visually/optically aimable headlamp, specifically the appropriate measurement distance and photo sensor aperture size. In that letter, we stated that the intent of the negotiated rulemaking, which culminated with the amendments to FMVSS No. 108 permitting visually-optically aimed headlamps, was to specify that the cut-off parameter should be measured and aimed at a distance of 10 meters using a photosensor with a 10 millimeter diameter. The letter also confirmed that compliance with photometric requirements is determined at 18.3 meters. NHTSA also stated its intent to include these requirements in a future amendment to FMVSS 108. This proposal fulfills that commitment by proposing to include these requirements in S14.10.1.5.

3. Structure of the Revised Standard

The agency developed the general approach for this proposal to reorganize FMVSS No. 108 through coordinated efforts between NHTSA and a lighting consultant with whom the agency contracted. The proposed structure for this administrative re-write follows that of a report submitted under this contract (which may be found in the docket for this rulemaking), beginning with the most common requirements and then proceeding to exceptions and permutations. As proposed, the standard progresses from vehicle-level requirements to device-level requirements, consolidated from a structural perspective to the extent possible. References to third-party documents have been eliminated, to the extent possible, with applicable requirements instead being included directly in the text of FMVSS No. 108.

The following provides an overview of the provisions contained in the revised standard, as proposed. As previously mentioned, paragraphs S1 through S4 are nearly identical to the existing standard. S5 makes clear that some SAE documents continue to be incorporated by reference in FMVSS No. 108 and states that a list of those SAE documents may be found in 49 CFR 571.5(j). (We note that while 49 CFR 571.5 (j) does not currently exist, a recent NPRM [10] published in the **Federal Register** proposed to establish 49 CFR 571.5 as a centralized repository of all third-party documents incorporated by reference in our FMVSSs.)

As proposed, we have reorganized S6 to include the vehicle-level requirements for motor vehicle lighting equipment. The basic parameters for such equipment, including quantity required, color, mounting, and activation, are addressed. Supplementing S6 is Table I. Table I specifies requirements for the above parameters for each lamp and reflective device. In terms of hierarchy, Table I is organized by starting with equipment required on all vehicles (except trailers and motorcycles), and then listing other required or optional devices that are necessary depending on the specific width, length, weight, construction, or purpose of a vehicle. This process is subsequently repeated for trailers and motorcycles.

Proposed Table I also incorporates the content from Tables I, II, III, and IV of current FMVSS No. 108, as well as activation requirements from the text of the current standard. The term ''activation'' is given the same meaning in both the proposed re-write and the current version of FMVSS No. 108; that term refers to how the light sources for specific lighting functions are energized. Some of these requirements are currently identified as ''wiring'' requirements under FMVSS No. 108, but because of problems associated with imprecise usage of that term, we have decided not to use it to describe energizing light sources in the re-write.

S6 also describes additional equipment that may be installed under the standard, such as Daytime Running Lamps (DRLs) and additional quantities of required devices above those needed to make a vehicle compliant with the standard. A recent letter of interpretation (the previously discussed letter of interpretation to Mr. Clarke) concerning the installation of auxiliary identification lamps is reflected in this section. The requirement that additional equipment cannot impair the effectiveness of required equipment is also included under S6, along with requirements that arise when a lamp or reflective device is obscured by another item of equipment. Permitted and prohibited combinations of lamps and reflective devices are included in S6.3,

[10] 70 FR 36094 (June 22, 2005). This NPRM primarily addressed the definition of ''designated seating position'' (*see* Docket No. NHTSA–2005–21600–1).

and S6.4 deals with the requirements of effective projected luminous lens area and visibility. Specific effective projected luminous lens area and visibility requirements for all lamps are listed in Tables IV and V.

The use of ''DOT'' and ''DRL'' markings is explained in S6.5. We note that although we considered consolidating all marking requirements into one section, such an approach proved to be unattainable because of the organizational structure chosen for the re-write. Because the ''DOT'' marking is the one that has the widest applicability for items of equipment regulated under FMVSS No. 108 items and in light of the prominent position of S6.5, we do not believe that it would be overlooked by future users.

S6.6 lists the various items of associated equipment required on regulated vehicles. It also includes requirements for a license plate holder previously referenced in SAE J587 (OCT 1981). Another important provision is S6.7, which covers replacement lighting equipment. The proposed language in the re-write states that such equipment must conform to all requirements except photometry, and it must be designed to conform to photometry requirements, either of the current version of FMVSS No. 108 or the version in effect at the time of manufacture of the original equipment being replaced. This text provides the distinction for older lamp replacements contained in paragraphs S5.8.3 to S5.8.9 of the current standard.

Performance requirements based upon physical tests (*e.g.*, corrosion test, vibration test, dust test) begin at S6.8. Most of the detailed test procedures and performance requirements have been placed in Table XXI for associated equipment, Table XXII for signal lamps, motorcycle headlamps, and reflective devices, and Table XXIII for headlamps. Tests for color and plastic optical materials placed in Table XXII also may apply to headlamps.

S6.8 also includes detailed procedures for photometric testing. For example, one specific test procedure applies to all lamps, except license plate lamps, headlamps, and DRLs. Another test procedure is specifically for license plate lamps, while yet another applies only to DRLs. Headlamps have their own test procedure, as do reflex reflectors and retroreflective sheeting. A major distinction between these different photometry test procedures is the minimum distance required between the sample lamp or reflective device and the photo detector.

Requirements for specific lamps, reflective devices, and items of associated equipment are contained in S7. There is a provision for each individual type of lamp or reflective device, under which design requirements, if any, are listed, and physical test requirements for that item are contained in Table XXII. In addition, the photometric test requirements specific to each signal lamp or reflective device are included in Tables VII through XVII. These tables, along with their footnotes, provide complete photometric requirements for the lamps and reflective devices installed on all regulated vehicles covered under the standard. Photometry requirements generally include minimum and maximum luminous intensities at specific test points or groups of test points, intensities for arrays of multiple lamps or multiple compartment lamps, intensity ratios between the separate functions of optically combined lamps, as well as differing intensities for lamps that perform the same function but are of different colors.

Requirements for conspicuity systems on truck tractors and some trailers are also a part of S7. The text of S7 sets forth presence, performance, and marking requirements, while the application requirements for covered vehicles are contained in Table III. Figures 11, 12–1, 12–2, and 13 visually supplement the narrative explanation in Table III concerning the placement of conspicuity material on these vehicles. Table XVI includes photometry requirements for reflex reflectors, conspicuity reflex reflectors, and retroreflective sheeting. Specific requirements for items of associated equipment are contained in S7.14, while the applicable test requirements are specified in Table XXI.

S8 contains the requirements for headlighting systems and cites Table II, which specifically addresses the four categories of headlamps that are permitted to be installed on vehicles. Each of these categories (sealed beam, integral beam, replaceable bulb, and combination headlighting systems) has specific photometric requirements. The requirements are also dependent upon whether the system is a two-lamp or four-lamp design and whether the headlamps are mechanically or visually aimed. All upper beam photometric requirements are contained in Table XVIII, and all lower beam photometric requirements are contained in Table XIX. S8 also describes how upper beam and lower beam headlamps must be arranged on the vehicle.

Under proposed S9, the standard provides more detailed requirements for sealed beam headlamps, including a statement explaining that basic design information may be found in Appendix C of Part 564. In addition, S9 specifies requirements for a sealed beam headlighting system in which the upper and lower beams are aimed simultaneously. The text also directs the reader to the applicable photometric and physical test requirements for that type of headlighting system.

Similar to the provisions in S9, paragraph S10 contains analogous provisions for integral beam headlamps, and paragraph S11 contains those same type of provisions for replaceable bulb headlamps. S12 contains requirements for combination headlamps. A combination headlamp system, being composed of a combination of specific sealed beam headlamps, integral beam headlamps, or replaceable bulb headlamps, does not have specific performance requirements. Rather, its component parts are required to meet the performance associated with their particular category.

Paragraph S13 contains requirements for motorcycle headlamps. Generally, motorcycles may use one half of any listed headlamp system or a headlighting system exclusive to motorcycles. The standard includes design requirements for the motorcycle-exclusive system in S13 and associated photometry requirements in Table XX. Requirements for motorcycle headlamp modulation systems are also contained in S13.

Paragraph S14 addresses headlamp adjustment and aiming. Headlamps may either be mechanically aimed by an external aiming device that attaches to the lens face, mechanically aimed by using an integral aiming device called a Vehicle Headlamp Aiming Device (VHAD), or be visually-optically aimed. S14 includes specific requirements for each of these aiming systems, and Table XXIII contains physical test requirements for the VHAD system. Requirements for marking the optical axis of a headlamp are also contained in this section.

Paragraph S15, dealing with replaceable light sources, is almost identical to the corresponding section currently in FMVSS No. 108; however, some test procedures and performance requirements have been incorporated into Table XXIII. Paragraph S16, addressing headlamp concealment devices, has been adopted verbatim from the current FMVSS No. 108. Paragraph S17 consolidates marking requirements that apply only to headlamps and lists for reference the other sections of the FMVSS No. 108 re-write where marking requirements reside. Paragraph S18 contains requirements for headlamps with replaceable lenses.

4. Incorporations by Reference

FMVSS No. 108 currently incorporates approximately three dozen SAE standards by reference. Under the proposed reorganization of the re-write, the number of SAE standards that would continue to be incorporated by reference is reduced to eight. This reduction would be achieved by including performance requirements and test procedures currently contained in SAE standards into the tables and text of FMVSS No. 108. We believe that this modification would greatly increase the utility of the document and that most interested parties would infrequently, if ever, need to use the SAE standards that continue to be incorporated by reference.

Under the proposed re-write, FMVSS No. 108 would still incorporate the requirements of the following SAE Standards by reference: (1) SAE J588e, *Turn Signal Lamps* (September 1970), (2) SAE J573d, *Lamp Bulbs and Sealed Units* (December 1968), (3) SAE J577, *Vibration Test Machine* (April 1964), (4) SAE J823b, *Flasher Test Equipment* (April 1968), (5) SAE J602, *Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units* (August 1963), (6) SAE J602, *Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units* (October 1980), (7) SAE J2009, *Discharge Forward Lighting Systems* (February 1993), and (8) SAE J1050, *Describing and Measuring the Driver's Field of View.*

C. Effective Date

As previously discussed, the proposed amendments set forth in this notice would not make substantive changes to the existing standard. Instead, we are proposing to amend and reorganize the regulatory text of FMVSS No. 108 so that it simplifies the presentation of the standard's requirements for lamps, reflective devices, and associated equipment and reflects the agency's interpretation of the existing requirements. We believe vehicle manufacturers and lighting manufacturers would not have to make any changes to their respective products or production processes if this proposal were made final; instead, the proposed amendments should reduce the burden of certifying to Standard No. 108 for regulated parties. Accordingly, we are proposing to make the proposed revisions effective 180 days after publication of the final rule. Voluntary early compliance with the reorganized standard would be permitted immediately, although the substantive requirements are identical under both versions.

IV. Benefits and Costs

Because this proposal only reorganizes the existing requirements of the standard, we do not anticipate that there would be any costs or benefits associated with this rulemaking action to implement an administrative re-write of FMVSS No. 108, other than the benefits associated with a clearer, easier-to-read standard. Accordingly, the agency did not conduct a separate economic analysis for this rulemaking.

V. Public Participation

How Can I Influence NHTSA's Thinking on This Notice?

In developing this notice, NHTSA has sought to address the concerns of all stakeholders. Your comments will help us determine the final form for the standard, pursuant to the FMVSS No. 108 re-write. We invite you to provide different views about the issues presented, specific interpretations that have not been included in the re-write that you think should be (including applicable proposed regulatory text), how this notice may affect you, or other relevant information. We welcome your views on all aspects of this notice. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide empirical evidence, wherever possible, to support your views.
- If you estimate potential costs, explain how you arrived at that estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives, including proposed regulatory text.
- Reference specific sections of the notice in your comments, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number of the proceeding as part of your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing your document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. Each electronic filer will receive electronic confirmation that his or her submission has been received.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter delineating that information, as specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also review filed public comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. (Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'') After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Data Quality Act Statement

Pursuant to the Data Quality Act, in order for substantive data submitted by third parties to be relied upon and used by the agency, it must also meet the information quality standards set forth in the DOT Data Quality Act guidelines. Accordingly, members of the public should consult the guidelines in preparing information submissions to the agency. DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf*.

VI. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[11] These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.[12] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[13] The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[14] The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.[15]

FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, was originally established in a final rule published in the **Federal Register** on February 3, 1967 (32 FR 2408). The purpose of the standard is to reduce traffic accidents and deaths and injuries resulting from traffic accidents, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility. Since the time of the standard's initial promulgation, the agency has undertaken numerous rulemakings and interpretations related to Standard No. 108, in many cases to deal with the emergence of new lighting technologies. In recent years, concerns have been raised that after nearly four decades of amendment, navigating the requirements of the standard has become increasingly difficult. Therefore, the agency is proposing an administrative re-write of Standard No. 108 in order to improve its structure and clarity, without changing any of its existing substantive requirements. In preparing this proposed rule, the agency carefully considered the statutory requirements of 49 U.S.C. Chapter 301.

First, this proposal reflects the agency's careful consideration and analysis of all existing regulatory provision of FMVSS No. 108, as well as salient letters of interpretation related to that standard. In developing the substantive provisions of the standard over the years, the agency considered all relevant, available motor vehicle safety information, including available research, testing results, and other information related to various technologies. This proposed administrative re-write does not change any of these existing provisions or the basis therefore.

Second, to ensure that the requirements of FMVSS No. 108 are practicable (as well as consistent with our safety objectives), the agency evaluated the cost, availability, and suitability of the standard's provisions, both when initially adopted and during subsequent amendments. As noted above, the changes resulting from this proposal are administrative in nature and would not impact the costs and benefits of the standard. In sum, we believe that this proposal is practicable and would maintain the benefits of Standard No. 108.

Third, the proposed regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. In certain cases, the proposal would modify the language of the standard to improve clarity or to incorporate existing interpretations, again without changing the substance of the existing requirements.

Fourth, we believe that this proposed rule would meet the need for motor vehicle safety by clarifying the safety standard, thereby making it easier for regulated parties to comply with all applicable requirements.

Finally, we believe that this proposal is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the modifications to the standard resulting from this proposal would be administrative in nature. It does not affect the substance of the requirements or the bases for those requirements, as articulated in earlier rulemakings. Accordingly, we believe that this proposal would be appropriate for covered vehicles that are or would become subject to these provisions of FMVSS No. 108 because it furthers the agency's objective of preventing crash-related deaths and serious injuries by ensuring adequate illumination of roadways and enhanced conspicuity of motor vehicles.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant

[11] 49 U.S.C. 30111(a).

[12] 49 U.S.C. 30102(a)(9).

[13] 49 U.S.C. 30111(b).

[14] *Id.*

[15] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

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.

This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. The rule is not considered to be significant within the meaning of E.O. 12866 or the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034 (Feb. 26, 1979)). As stated above in Section IV, *Benefits and Costs,* this proposal is not expected to require parties subject to the requirements of the safety standard to alter their existing practices for certifying compliance with Standard No. 108 or to increase costs of compliance, because the proposal would only reorganize and clarify existing requirements. Accordingly, the agency has not prepared any supplemental economic analysis to accompany this rulemaking document.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the present proposal does not make any substantive changes to this safety standard, so affected parties would be able to continue current practices without change. Accordingly, we do not anticipate that this proposal would have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

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

NHTSA has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132, and the agency determined that the rule would not have sufficient Federalism implications to warrant consultations with State and local officials or the preparation of a Federalism summary impact statement. This proposed rule is not expected to have any substantial effects on the States, or on the current distribution of power and responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

F. Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This proposed rule is not subject to E.O. 13045 because it is not an economically significant regulatory action under Executive Order 12866, and because it does not involve decisions based upon health and safety risks that disproportionately affect children.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule does not contain any collection of information

requirements requiring review under the PRA.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

This proposal would not adopt or reference any new industry or consensus standards that were not already present in Standard No. 108. The agency's statements regarding the rationale for the use (or non-use) of third-party standards, as presented in prior rulemakings, remain unchanged.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995 (so currently about $112 million in 2001 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This proposed rule is not anticipated to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of $112 million annually. Instead, the cost impact of this administrative re-write of Standard No. 108 is expected to be $0. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

K. Regulatory 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.

L. Privacy Act

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

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, Part 571 is proposed to be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

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

2. Section 571.108 is revised to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

S1 *Scope*. This standard specifies requirements for original and replacement lamps, reflective devices, and associated equipment.

S2 *Purpose*. The purpose of this standard is to reduce traffic accidents and deaths and injuries resulting from traffic accidents, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility.

S3 *Application*. This standard applies to:

S3.1 Passenger cars, multipurpose passenger vehicles, trucks, buses, trailers (except pole trailers and trailer converter dollies), and motorcycles;

S3.2 Retroreflective sheeting and reflex reflectors manufactured to conform to S7.12 of this standard; and

S3.3 Lamps, reflective devices, and associated equipment for replacement of like equipment on vehicles to which this standard applies.

S4 *Definitions*. Definitions of additional terms used in this standard may be found at 49 CFR 571.3.

Aiming plane means a plane defined by the surface of the three aiming pads on the lens.

Aiming reference plane means a plane which is perpendicular to the longitudinal axis of the vehicle and tangent to the forwardmost aiming pad on the headlamp.

Aiming screws are the horizontal and vertical adjusting screws with self-locking features used to aim and retain a headlamp unit in the proper position.

Axis of reference means the characteristic axis of the lamp for use as the direction of reference (H = 0°, V = 0°) for angles of field for photometric measurements and for installing the lamp on the vehicle.

Backup lamp means a lamp or lamps which illuminate the road to the rear of a vehicle and provide a warning signal to pedestrians and other drivers when the vehicle is backing up or is about to back up.

Beam contributor means an indivisible optical assembly including a lens, reflector, and light source, that is part of an integral beam headlighting system and contributes only a portion of a headlamp beam.

Cargo lamp is a lamp that is mounted on a multipurpose passenger vehicle, truck, or bus for the purpose of providing illumination to load or unload cargo.

Clearance lamps are lamps which show to the front or rear of the vehicle, mounted on the permanent structure of the vehicle as near as practicable to the upper left and right extreme edges to indicate the overall width and height of the vehicle.

Coated materials means a material which has a coating applied to the surface of the finished sample to impart some protective properties. Coating identification means a mark of the manufacturer's name, formulation designation number, and recommendations for application.

Color. Fundamental definitions of color are expressed by Chromaticity Coordinates according to the International Commission on Illumination (C.I.E.) 1931 Standard Colorimetric System.

Color bleeding means the migration of color out of a plastic part onto the surrounding surface.

Combination clearance and side marker lamps are single lamps which simultaneously fulfill the requirements of clearance and side marker lamps.

Cracking means a separation of adjacent sections of a plastic material with penetration into the specimen.

Crazing means a network of apparent fine cracks on or beneath the surface of materials.

Cutoff means a generally horizontal, visual/optical aiming cue in the lower beam that marks a separation between areas of higher and lower luminance.

Daytime running lamps (DRL's) are steady burning lamps that are used to improve the conspicuity of a vehicle from the front and front sides when the regular headlamps are not required for driving.

Delamination means a separation of the layers of a material including coatings.

Design voltage means the voltage used for design purposes.

Direct reading indicator means a device that is mounted in its entirety on a headlamp or headlamp aiming or headlamp mounting equipment, is part of a VHAD, and provides information about headlamp aim in an analog or digital format.

Effective light-emitting surface means that portion of a lamp that directs light to the photometric test pattern, and does not include transparent lenses, mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from an area of ½° radius around a test point.

Effective projected luminous lens area means the area of the orthogonal projection of the effective light-emitting surface of a lamp on a plane perpendicular to a defined direction relative to the axis of reference. Unless otherwise specified, the direction is coincident with the axis of reference. The term *functional lighted lens area* in any SAE Standard or Recommended Practice incorporated by reference or by subreference in this standard, has the same meaning as *effective projected luminous lens area.*

Exposed means material used in lenses or optical devices exposed to direct sunlight as installed on the vehicle.

Filament means that part of the light source or light emitting element(s), such as a resistive element, the excited portion of a specific mixture of gases under pressure, or any part of other energy conversion sources, that generates radiant energy which can be seen.

Flash means a cycle of activation and deactivation of a lamp by automatic means continuing until stopped either automatically or manually.

Fully opened means the position of the headlamp concealment device in which the headlamp is in the design open operating position.

H–V axis means the line from the center of the principal filament of a lamp to the intersection of the horizontal (H) and vertical (V) lines of a photometric test screen.

Haze means the cloudy or turbid appearance of an otherwise transparent specimen caused by light scattered from within the specimen or from its surface.

Headlamp means a lighting device providing an upper and/or a lower beam used for providing illumination forward of the vehicle.

Headlamp concealment device means a device, with its operating system and components, that provides concealment of the headlamp when it is not in use, including a movable headlamp cover and a headlamp that displaces for concealment purposes.

Headlamp mechanical axis means the line formed by the intersection of a horizontal and a vertical plane through the light source parallel to the longitudinal axis of the vehicle. If the mechanical axis of the headlamp is not at the geometric center of the lens, then the location will be indicated by the manufacturer on the headlamp.

Headlamp test fixture means a device designed to support a headlamp or headlamp assembly in the test position specified in the laboratory tests and whose mounting hardware and components are those necessary to operate the headlamp as installed in a motor vehicle.

High-mounted stop lamp means a lamp mounted high and possibly forward of the tail, stop, and rear turn signal lamps intended to give a steady stop warning through intervening vehicles to operators of following vehicles.

Identification lamps are lamps used in groups of three, in a horizontal row, which show to the front or rear or both, having lamp centers spaced not less than [6 in.] 15.2 mm. nor more than [12 in.] 30.4 mm. apart, mounted on the permanent structure as near as practicable to the vertical centerline and the top of the vehicle to identify certain types of vehicles.

Integral beam headlamp means a headlamp (other than a standardized sealed beam headlamp designed to conform to paragraph S9 or a replaceable bulb headlamp designed to conform to paragraph S11) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a headlamp conforming to paragraph S14.9 or paragraph S14.10 may have a lens designed to be replaceable.

License plate lamp means a lamp used to illuminate the license plate on the rear of a vehicle.

Lower beam means a beam intended to illuminate the road and its environs ahead of the vehicle when meeting or closely following another vehicle.

Mechanically aimable headlamp means a headlamp having three pads on the lens, forming an aiming plane used for laboratory photometric testing and for adjusting and inspecting the aim of the headlamp when installed on the vehicle.

Material means the type and grade of plastics, composition, and manufacturer's designation number and color.

Motor driven cycle means every motorcycle, including every motor scooter, with a motor which produces not more than 5 horsepower, and every bicycle with motor attached.

Motorcycle or motor driven cycle headlamp means a major lighting device used to produce general illumination ahead of the vehicle.

Mounting ring means the adjustable ring upon which a sealed beam unit is mounted.

Mounting ring (type F sealed beam) means the adjustable ring upon which a sealed beam unit is mounted and which forces the sealed beam unit to seat against the aiming ring when assembled into a sealed beam assembly.

Multiple compartment lamp means a device which gives its indication by two or more separately lighted areas which

are joined by one or more common parts, such as a housing or lens.

Multiple lamp arrangement means an array of two or more separate lamps on each side of the vehicle which operate together to give a signal.

Optically combined means a lamp having a single or two-filament light source or two or more separate light sources that operate in different ways, and has its optically functional lens area wholly or partially common to two or more lamp functions.

Overall width means the nominal design dimension of the widest part of the vehicle, exclusive of signal lamps, marker lamps, outside rearview mirrors, flexible fender extensions, mud flaps, and outside door handles determined with doors and windows closed, and the wheels in the straight-ahead position. Running boards may also be excluded from the determination of overall width if they do not extend beyond the width as determined by the other items excluded by this definition.

Parking lamps are lamps on both the left and right of the vehicle which show to the front and are intended to mark the vehicle when parked or serve as a reserve front position indicating system in the event of headlamp failure.

Protected means material used in inner lenses for optical devices where such lenses are protected from exposure to the sun by an outer lens made of materials meeting the requirements for exposed plastics.

Rated voltage means the nominal circuit or vehicle electrical system voltage classification.

Reflex reflectors are devices used on vehicles to give an indication to approaching drivers using reflected light from the lamps of the approaching vehicle.

Remote reading indicator means a device that is not mounted in its entirety on a headlamp or headlamp aiming or headlamp mounting equipment, but otherwise meets the definition of a direct reading indicator.

Replaceable bulb headlamp means a headlamp comprising a bonded lens and reflector assembly and one or two headlamp replaceable light sources, except that a headlamp conforming to paragraph S14.9 or paragraph S14.10 may have a lens designed to be replaceable.

Replaceable light source means an assembly of a capsule, base, and terminals manufactured as a light source for an upper and/or lower beam of a replaceable bulb headlamp that is designed to conform to the requirements of appendix A or appendix B of 49 CFR part 564, *Replaceable Light Source Information.*

Retaining ring means the clamping ring that holds a sealed beam unit against a mounting ring.

Retaining ring (type F sealed beam) means the clamping ring that holds a sealed beam unit against a mounting ring, and that provides an interface between the unit's aiming/seating pads and the headlamp aimer adapter (locating plate).

School bus signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform other users of the highway that such vehicle is stopped on the highway to take on or discharge school children.

Sealed beam headlamp means an integral and indivisible optical assembly including the light source with ''SEALED BEAM'' molded in the lens.

Sealed beam headlamp assembly means a major lighting assembly which includes one or more sealed beam units used to provide general illumination ahead of the vehicle.

Seasoning means the process of energizing the filament of a headlamp at design voltage for a period of time equal to 1% of design life, or other equivalent method.

Semiautomatic headlamp beam switching device is one which provides either automatic or manual control of beam switching at the option of the driver. When the control is automatic the headlamps switch from the upper beam to the lower beam when illuminated by the headlamps on an approaching vehicle and switch back to the upper beam when the road ahead is dark. When the control is manual, the driver may obtain either beam manually regardless of the conditions ahead of the vehicle.

Side marker lamps are lamps which show to the side of the vehicle, mounted on the permanent structure of the vehicle as near as practicable to the front and rear edges to indicate the overall length of the vehicle. Additional lamps may also be mounted at intermediate locations on the sides of the vehicle.

Stop lamps are lamps giving a steady light to the rear of a vehicle to indicate a vehicle is stopping or diminishing speed by braking.

Taillamps are steady burning low intensity lamps used to designate the rear of a vehicle.

Test voltage means the specified voltage and tolerance to be used when conducting a test.

Turn signal flasher means a device which causes a turn signal lamp to flash as long as it is turned on.

Turn signal lamps are the signaling element of a turn signal system which indicates the intention to turn or change direction by giving a flashing light on the side toward which the turn will be made.

Turn signal operating unit means an operating unit that is part of a turn signal system by which the operator of a vehicle causes the signal units to function.

Upper beam means a beam intended primarily for distance illumination and for use when not meeting or closely following other vehicles.

Vehicle headlamp aiming device or VHAD means motor vehicle equipment, installed either on a vehicle or headlamp, which is used for determining the horizontal or vertical aim, or both the vertical and horizontal aim of the headlamp.

Vehicular hazard warning signal flasher means a device which, as long as it is turned on, causes all the required hazard warning lamps to flash.

Vehicular hazard warning signal operating unit means a driver controlled device which causes all turn signal lamps, or other hazard warning lamps, to flash simultaneously to indicate to approaching drivers the presence of a vehicular hazard.

Visually/optically aimable headlamp means a headlamp which is designed to be visually/optically aimable in accordance with the requirements of paragraph S14.10 of this standard.

S5 *References to SAE publications.*

S5.1 Each lamp, reflective device, and item of associated equipment must be designed to conform to the requirements of applicable SAE publications as referenced and subreferenced in this standard. The words ''it is recommended that,'' ''recommendations,'' or ''should be'' appearing in any SAE publication referenced or subreferenced in this standard must be read as setting forth mandatory requirements.

S5.2 A complete list of all SAE publications incorporated by reference in this standard are indexed at 49 CFR 571.5(j).

S6 *Vehicle requirements.*

S6.1 *Required lamps, reflective devices, and associated equipment by vehicle type.*

S6.1.1 *Quantity.* Except as provided in succeeding paragraphs of this standard, each vehicle must be equipped with not less than the number of lamps, reflective devices, and items of associated equipment specified for that vehicle type and size in Table I and Section 6.6, conforming to the requirements of this standard. Multiple license plate lamps and backup lamps

may be used to fulfill photometric requirements for those functions.

S6.1.1.1 *Conspicuity systems.* Each trailer of 2032 mm. or more in overall width, and with a GVWR over 10,000 lbs., except a trailer designed exclusively for living or office use, and each truck tractor must be equipped with retroreflective sheeting, reflex reflectors, or a combination of retroreflective sheeting and reflex reflectors as specified in S7.12 and Table III.

S6.1.1.1.1 A trailer equipped with a conspicuity treatment in conformance with S7.12 need not be equipped with the reflex reflectors required by Table I if the conspicuity material is placed at the locations of the reflex reflectors required by Table I.

S6.1.1.2 *High-mounted stop lamps.* Each multipurpose passenger vehicle, truck, and bus required by this standard to be equipped with a high-mounted stop lamp, whose vertical centerline, when the vehicle is viewed from the rear, is not located on a fixed body panel but separates one or two moveable body sections, such as doors, which lacks sufficient space to install a single high-mounted stop lamp on the centerline above such body sections, must have two high-mounted stop lamps identical in size and shape. The two lamps must be located at the same height, with one vertical edge of each lamp on the vertical edge of the body section nearest the vehicle centerline.

S6.1.1.3 *Truck tractor rear turn signal lamps.* A truck tractor need not be equipped with turn signal lamps mounted on the rear if the turn signal lamps installed at or near the front are of double face construction and are so located so that they meet the requirements for double faced turn signal lamps specified in SAE J588e, Turn Signal Lamps, September 1970.

S6.1.1.4 *Hazard warning lamps.* In all passenger cars, multipurpose passenger vehicles, trucks, and buses, the activation of the vehicular hazard warning signal operating unit must cause to flash simultaneously sufficient turn signal lamps to meet, as a minimum, the turn signal photometric requirements of this standard.

S6.1.2 *Color.* The color in all lamps and reflective devices must be as specified in Table I. The color identified as amber is identical to the color identified as yellow.

S6.1.3 *Mounting location and height.* Each lamp, reflective device, and item of associated equipment must be securely mounted on a fixed body panel of the vehicle, other than glazing, that is not designed to be removed except for repair, within the height limits as specified in Table I, and in a location where it complies with all applicable photometric requirements, effective projected luminous lens area requirements, and visibility requirements with all obstructions considered. When multiple lamp arrangements or multiple compartment rear turn signal lamps, stop lamps, or taillamps are used, with only a portion of the compartments or lamps installed on a rigid part of the vehicle, that portion must meet at least the photometric requirements for the appropriate single compartment lamp.

S6.1.3.1 *Mounting height.* The mounting height of each lamp and reflective device must be measured from the center of the item, as mounted on the vehicle at curb weight, to the road surface.

S6.1.3.2 *High-mounted stop lamp.*

S6.1.3.2.1 A high-mounted stop lamp mounted below the rear window must have no lens portion lower than 153 mm. [6 in.] below the lower edge of the rear window on convertibles, or 77 mm. [3 in.] on other passenger cars.

S6.1.3.2.2 A high-mounted stop lamp mounted inside the vehicle must have means provided to minimize reflections from the light of the lamp upon the rear window glazing that might be visible to the driver when viewed directly, or indirectly in the rearview mirror.

S6.1.4 *License plate lamp.* The license plate lamp or lamps installed on vehicles other than motorcycles and motor driven cycles must be mounted so as to illuminate the license plate without obstruction from any designed feature unless the lamp or lamps is (are) designed to comply with all the photometric requirements with these obstructions considered.

S6.1.5 *Activation.* Each lamp must be activated as specified, in the combinations specified, and in response to the inputs specified in Table I and Table II.

S6.1.5.1 *Stop lamp activation.* Each stop lamp may also be activated when the vehicle is slowed by a device designed to retard the motion of the vehicle.

S6.2 *Impairment.*

S6.2.1 No additional lamp, reflective device, or other motor vehicle equipment is permitted to be installed that impairs the effectiveness of lighting equipment required by this standard.

S6.2.2 If any required lamp or reflective device is obstructed by motor vehicle equipment (e.g., mirrors, snow plows, wrecker booms, backhoes, winches, etc.) including dealer installed equipment, and cannot meet the applicable photometry and visibility requirements, the vehicle must be equipped with an additional lamp or device of the same type which meet all applicable requirements of this standard, including photometry and visibility.

S6.2.3 Each auxiliary lamp that performs the function of a required lamp must meet the color, maximum photometric intensity, and activation requirements of the required lamp.

S6.2.4 *Daytime running lamps.* A passenger car, multipurpose passenger vehicle, truck, or bus may be equipped with a pair of daytime running lamps (DRL) as specified in Table I and S7.11 of this standard. DRLs may be combined with any lamps required by this standard except parking lamps and any lamps not required by this standard except fog lamps.

S6.2.5 *Auxiliary identification lamps.* Each auxiliary identification lamp must be located at least twice the distance from any required identification lamp as the distance between two adjacent required identification lamps.

S6.3 *Equipment combinations.* Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective device, and item of associated equipment are met with the following exceptions.

S6.3.1 No high-mounted stop lamp is permitted to be combined with any other lamp or reflective device, other than with a cargo lamp.

S6.3.2 No high-mounted stop lamp is permitted to be combined optically with any cargo lamp.

S6.3.3 No clearance lamp is permitted to be optically combined with any taillamp.

S6.4 *Visibility and aiming.*

S6.4.1 *Effective projected luminous lens area requirements.* Each turn signal lamp, stop lamp, high-mounted stop lamp, and school bus signal lamp must meet the appropriate effective projected luminous lens area requirement specified in Table IV.

S6.4.2 *Visibility.* Each backup lamp, single or combination of dual high-mounted stop lamp(s), and school bus signal lamp must meet the appropriate visibility requirement specified in Table V.

S6.4.3 *Visibility options.* A manufacturer must certify compliance of each lamp to one of the following visibility requirement options, and it may not thereafter choose a different option for that vehicle.

(a) *Lens area option.* When a vehicle is equipped with any lamp listed in Table V, each such lamp must provide not less than 1250 sq. mm. of unobstructed effective projected luminous lens area in any direction

throughout the pattern defined by the corner points specified in Table V for each such lamp; or

(b) *Luminous intensity option.* When a vehicle is equipped with any lamp listed in Table V, each such lamp must provide a luminous intensity of not less than that specified in Table V in any direction throughout the pattern defined by the corner points specified in Table V for each such lamp when measured in accordance with the photometry test requirements of this standard.

S6.4.4 *SAE visibility alternative.* As an alternative to S6.4.3 , each passenger car and motorcycle, and each multipurpose passenger vehicle, truck, trailer, and bus that is of less than 2032 mm. overall width, that are manufactured on or before September 1, 2011, and each multipurpose passenger vehicle, truck, trailer, and bus that is of 2032 mm. or more overall width, that are manufactured on or before September 1, 2014, must have each lamp located so that it meets the visibility requirements specified in Table V.

S6.4.5 *Low-mounted lamps.* For signal lamps and reflective devices mounted less than 750 mm. above the road surface, as measured to the lamp axis of reference, the vertical test point angles located below the horizontal plane subject to photometric and visibility requirements of this standard may be reduced to 5° down.

S6.4.6 *School bus signal lamp aiming.* Each school bus signal lamp must be mounted on the vehicle with their aiming plane vertical and normal to the vehicle longitudinal axis. Aim tolerance must be no more than 5 in. vertically and 10 in. horizontally at 25 ft. from the lamp. If the lamps are aimed or inspected by use of the SAE J602, *Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units* (August 1963), aimer the graduation settings for aim must be 2° D and 0° sideways for aiming and the limits must be 3° U to 7° D and from 10° R to 10° L for inspection.

S6.5 *Marking.*

S6.5.1 *DOT marking.* The lens of each original equipment and replacement headlamp, and of each original equipment and replacement beam contributor, and each replacement headlamp lens for an integral beam or replaceable bulb headlamp, must be marked with the symbol ''DOT'' either horizontally or vertically to indicate certification under the standard.

S6.5.1.1 DOT marking requirements for conspicuity materials are specified in S7.12 of this standard.

S6.5.1.2 Each original equipment or replacement lamp or reflective device specified in Table I, except for a headlamp, or item of associated equipment specified in Section 6.6 may be marked with the symbol ''DOT'' which constitutes a certification that it conforms to the requirements of this standard.

S6.5.2 *DRL marking.* Each original equipment and replacement lamp used as a daytime running lamp (DRL), unless optically combined with a headlamp, must be permanently marked ''DRL'' in letters not less than 3 mm. high.

S6.6 *Associated equipment.* All vehicles covered by this standard (except trailers) must be equipped with a turn signal operating unit, a turn signal flasher, a turn signal pilot indicator, a headlamp beam switching device, and an upper beam headlamp indicator meeting the requirements of this section and as specified in Table III. All vehicles covered by this standard (except trailers and motorcycles) must be equipped with a vehicular hazard warning operating unit, a vehicular hazard warning signal flasher, and a vehicular hazard warning signal pilot indicator meeting the requirements of this section and as specified in Table III.

S6.6.1 *License plate holder.* Each license plate holder must be designed and constructed to provide a substantial plane surface on which to mount the plate. The plane of the license plate mounting surface and the plane on which the vehicle stands must be perpendicular within ± 15°.

S6.7 *Replacement equipment.*

S6.7.1 *General requirements.*

S6.7.1.1 Each replacement lamp, reflective device, or item of associated equipment, including a combination lamp, must:

(a) Be designed to conform to meet all requirements specified in this standard for that type of lamp, reflective device, or other item of equipment (in the case of a combination lamp, it must meet these requirements for each function); and

(b) Include all of the functions of the lamp, reflective device, or item of associated equipment, including a combination lamp, it is designed to replace or is capable of replacing (other than functions not required by this standard).

S6.7.1.2 Each replacement lamp, reflective device, or item of associated equipment, including a combination lamp, which is designed or recommended for particular vehicle models must be designed so that it does not to take the vehicle out of compliance with this standard when the individual device is installed on the vehicle. Except as provided in S6.7.1.3, the determination of whether a vehicle would be taken out of compliance with this standard when an individual device is installed on the vehicle is made without regard to whether additional devices, including separate lamps or reflective devices sold together with the device, would also be installed.

S6.7.1.3 In the case of a lamp or other device that is used on each side of the vehicle in pairs, the determination (for purposes of S6.7.1.2) of whether a vehicle would be taken out of compliance with this standard when an individual device is installed on the vehicle is made assuming that the other matched paired device would be installed on the other side of the vehicle, whether or not the matched paired devices are sold together. This provision does not limit the responsibilities of manufacturers, distributors, dealers or motor vehicle repair businesses under 49 U.S.C. 30122, *Making safety devices and elements inoperative.*

S6.7.2 *Version of this standard.* The requirements of S6.7.1 must be met, at the option of the manufacturer, using either the current version of this standard or the standard in effect at the time of manufacture of the original equipment being replaced.

S6.8 *Physical tests.*

S.6.8.1 Each lamp, reflective device, and item of conspicuity treatment required or allowed by this standard must meet all applicable physical test requirements specified in Table XXII. Each headlamp must meet all applicable physical test requirements specified in Table XXIII. Each item of associated equipment required by this standard must meet all applicable physical test requirements specified in Table III.

S6.8.2 *Samples for test.* Samples submitted for laboratory test must be new, unused, manufactured from production tooling and assembled by production processes, and representative of the devices as regularly manufactured and marketed. Each must include not only the device but also accessory equipment necessary to operate in its intended manner. Where necessary, a mounting bracket should be provided so that the device may be rigidly bolted in its operating position on the various test equipment. A mounting bracket with a sample headlamp installed must not have a resonant frequency in the 10–55 Hz. range. Dust and photometric tests may be made on a second set of mounted samples to expedite completion of the tests. Color test samples for materials used for reflex reflectors may be either the actual reflector or a disc of the same material, technique of fabrication, and dye formulation as the reflex reflector

having a thickness of twice the distance from the face of the reflector lens to the apexes of the reflecting elements.

S6.8.3 *Laboratory facilities.* The laboratory must be equipped to test the sample in accordance with the requirements of the specific device.

S6.8.4 *Plastic optical materials.* All plastic materials used for optical parts such as lenses and reflectors on lamps or reflective devices required or allowed by this standard must conform to the material test requirements of Table XXII.

S6.8.4.1 All coatings used on optical materials must have added to their formulations an optical brightener, whose presence is detectable by ultraviolet light, to aid in testing for their presence. Other equivalent industry accepted methods may be used as an alternative.

S6.8.5 *Photometric tests.* Each lamp and reflective device required or allowed by this standard must be designed to conform to the stated photometric requirements.

S6.8.5.1 *Photometry measurements for all lamps except license lamps, headlamps, and DRLs.* Photometry measurements are made with the sample lamp mounted in its normal operating position. A school bus signal lamp must be aimed with its aiming plane normal to the photometer axis and may be reaimed for photometry by ±½° vertically and ±1° horizontally. Photometric measurements are made at a distance between the light source and the point of measurement of at least 1.2 m. for sidemarker lamps, clearance lamps, identification lamps, and parking lamps, and at least 3 m. for all other lamps except license plate lamps and headlamps. When making photometric measurements at specific test points, the luminous intensity values between test points must not be less than the lower of the specified value of the two closest adjacent test points, on a horizontal or vertical line, for minimum values.

S6.8.5.1.1 *Location of test points.* Test point location must comply with the following nomenclature: The line formed by the intersection of a vertical plane through the light source of the lamp and normal to the test screen is designated ''V''. The line formed by the intersection of a horizontal plane through the light source and normal to the test screen is designated ''H''. The point of intersection of these two lines is designated ''H–V''. Other test points on the test screen are measured in terms of angles from the H and V lines. Angles to the right (R) and to the left (L) are regarded as being to the right and left of the V line when the observer stands behind the lamp and looks in the direction of its light beam when it is properly aimed for photometry. Similarly, the upward angles designated as U and the downward angles designated as D, refer to light directed at angles above and below the H line, respectively.

S6.8.5.1.2 *Multiple compartment and multiple lamp photometry.* When compartments of lamps or arrangements of multiple lamps are photometered together, the H–V axis intersects the midpoint between the optical axes. Luminous intensity measurements of multiple compartment lamp or multiple lamp arrangements are made either by;

S6.8.5.1.2.1 Measuring all compartments together, provided that a line from the optical axis of each compartment or lamp to the center of the photometer sensing device does not make an angle more than 0.6° with the H–V axis, or

S6.8.5.1.2.2 Measuring each compartment or lamp separately by aligning its optical axis with the photometer and adding the value at each test point.

S6.8.5.1.2.3 Multiple compartment or multiple lamp arrangements installed on multipurpose passenger vehicles, trucks, trailers, or buses 2032 mm or more in overall width must use the method of S6.8.5.1.2.2 only.

S6.8.5.2 *Bulbs.* Except for a lamp having a sealed-in bulb, a lamp must meet the applicable requirements of this standard when tested with a bulb whose filament is positioned within ±.010 in. of the nominal design position specified in SAE J573d, *Lamp Bulbs and Sealed Units,* December 1968, or specified by the bulb manufacturer and operated at the bulb's rated mean spherical candela.

S6.8.5.2.1 Each lamp designed to use a type of bulb that has not been assigned a mean spherical candela rating by its manufacturer and is not listed in SAE J573d, *Lamp Bulbs and Sealed Units,* December 1968, must meet the applicable requirements of this standard when used with any bulb of the type specified by the lamp manufacturer, operated at the bulb's design voltage. A lamp that contains a sealed-in bulb must meet these requirements with the bulb operated at the bulb's design voltage.

S6.8.5.3 *License plate lamp photometry.* Photometry compliance of license plate lamps is determined by measurement of the illumination falling upon test stations located on a test plate.

S6.8.5.3.1 *Illumination surface.* All illumination measurements are made on a rectangular test plate of clean, white blotting paper mounted on the license plate holder in the position normally taken by the license plate. The face of the test plate must be 1.5mm from the face of the license plate holder.

S6.8.5.3.2 *Test stations.* For lamps used on vehicles other than motorcycles and motor driven cycles, the test stations must be located on the face of the test plate as shown in Table XIII for those types of lamps. For lamps used on motorcycles and motor driven cycles, the test stations must be located on the face of the test plate as shown in Table XIII for those types of lamps.

S6.8.5.4 *Reflex reflector photometry.* Each reflex reflector is mounted for photometry with the center of the reflex area at the center of goniometer rotation and at the same horizontal level as the source of illumination. The source of illumination is a lamp with a 50mm. effective diameter and with a filament operating at 2856 °K. The test distance is 30.5 m. [100ft.]. The observation point is located directly above the source of illumination. The H–V axis of reflex reflectors is taken as parallel to the longitudinal axis of the vehicle for rear reflectors and perpendicular to a vertical plane passing through the longitudinal axis of the vehicle for side reflectors. The photodetector has an opening of not more than 13 mm. vertically and 25 mm. horizontally. Reflex reflectors may have any linear or area dimensions but must have no more than 7740 mm. projected area contained within a 254 mm. diameter circle exposed for photometry.

S6.8.5.4.1 *Reflex reflector and retroreflective sheeting photometry measurements.* Photometric measurements of reflex reflectors and retroreflective sheeting must be made at various observation and entrance angles as shown in Table XVI. The observation angle is the angle formed by a line from the observation point to the center of the reflector and a second line from the center of the reflector to the source of illumination. The entrance angle is the angle between the axis of the reflex reflector and a line from the center of the reflector to the source of illumination. The entrance angle is designated left, right, up, and down in accordance with the position of the source of illumination with respect to the axis of the reflex reflector as viewed from behind the reflector. Measurements are made of the luminous intensity which the reflex reflector is projecting toward the observation point and the illumination on the reflex reflector from the source of illumination. The required measurement at each test point as shown in Table XVI is the quotient of the projected luminous intensity divided by the illumination expressed as millicandela per lux or candela per footcandle. The required measurement

for retroreflective sheeting is candela per lux per square meter of area.

S6.8.5.4.1.1 *Reflex reflector photometry measurement adjustments.* Reflex reflectors, which do not have a fixed rotational position on the vehicle, are rotated about their axis through 360° to find the minimum photometric value which must be reported for each test point. If the output falls below the minimum requirement at any test point, the reflector is rotated ±5° about its axis from the angle where the minimum output occurred, and the maximum value within this angle is reported as a tolerance value. Reflex reflectors, which by their design or construction, permit mounting on a vehicle in a fixed rotational position, are tested in this position. A visual locator, such as the word TOP is not considered adequate to establish a fixed rotational position on the vehicle. If uncolored reflections from the front surface interfere with photometric readings at any test point, additional readings are taken 1° above, below, right, and left of the test point, and the lowest of these readings and its location is reported provided the minimum test point requirement for the test point is met.

S6.8.5.5 *Daytime running lamp (DRL) photometry measurements.* Each DRL is tested to the procedure of S6.8.5.6 when a test voltage of 12.8 v. ± 20 mv. is applied to the input terminals of the lamp switch module or voltage-reducing equipment, whichever is closer to the electrical source on the vehicle. The test distance from the lamp to the photometer is not less than 18.3 m. if the lamp is optically combined with a headlamp, or is a separate lamp, and not less than 3 m. if the lamp is optically combined with a lamp, other than a headlamp, that is required by this standard.

S6.8.5.6 *Headlamp photometry measurements.* Photometry measurements at the appropriate test points are made with the sample headlamp mounted in its normal operating position. Photometric measurements are made at a distance between the light source and the photometer sensor of at least 18.3 m.

S6.8.5.6.1 *Seasoning and test voltage.* All sealed beam headlamps, integral beam headlamps, beam contributors, and replaceable light sources are seasoned at design voltage for 1% of its average design life or 10 hours, whichever is less, prior to a photometry test. A headlamp is tested at 12.8 v. ± 20 mv. D.C. as measured at the terminals of the lamp.

S6.8.5.6.2 *Aiming.* Each headlamp is aimed prior to a photometry test in accordance with the procedure appropriate to its aiming system. A ¼° reaim is permitted in any direction at any test point to allow for variations in readings between laboratories for all headlamps except a Type F upper beam unit not equipped with a VHAD.

(a) *Mechanically aimable headlamps using an external aimer.* The headlamp is aimed mechanically with the aiming plane at the design angle(s) to the photometer axis and the mechanical axis of the headlamp on the photometer axis.

(b) *Mechanically aimable headlamps equipped with a VHAD.* The headlamp is aimed mechanically using the VHAD in accordance with the manufacturer's instructions as provided with the vehicle on which the headlamp is intended to be used.

(c) *Visually aimable lower beam headlamps—vertical aim.* A VOL cutoff headlamp must have the location of the cutoff maximum gradient, as determined by the method of this Standard, positioned at 0.4° down from the H–H line. A VOR cutoff headlamp must have the location of the cutoff maximum gradient, as determined by the method of this Standard, positioned at the H–H axis.

(d) *Visually aimable lower beam headlamps—horizontal aim.* There must be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it must be set to zero.

(e) *Visually aimable upper beam headlamps—vertical aim.* A headlamp whose upper beam is combined with a lower beam must not have its vertical aim changed from that set for the lower beam. A headlamp whose upper beam is not combined with a lower beam must have its maximum beam intensity positioned on the H–H axis.

(f) *Visually aimable upper beam headlamps—horizontal aim.* A headlamp whose upper beam is combined with a lower beam must not have its horizontal aim changed from that set for the lower beam. A headlamp whose upper beam is not combined with a lower beam and has a fixed horizontal aim or has a horizontal VHAD must be mounted in its normal operating position on a goniometer such that the mounting fixture alignment axes are coincident with the goniometer axes and must be energized at 12.8 v. ± 20 mv. There must be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD, in which case the VHAD must be adjusted to zero. A headlamp whose upper beam is not combined with a lower beam and is not equipped with a horizontal VHAD, the horizontal aim must be adjusted so that the maximum beam intensity is positioned on the V–V axis.

(g) *Simultaneous aim Type F sealed beam headlamps and beam contributor integral beam headlamps.* A headlamp system allowed to use simultaneous aim of lower beams and upper beams must be aimed mechanically for lower beam photometry by centering the lower beam unit or the geometric center of all lower beam contributors on the photometer axis and aligning the aiming plane, aiming reference plane, or other appropriate vertical plane defined by the manufacturer perpendicular to the photometer axis. It must be aimed for upper beam photometry by moving the assembly in a plane parallel to the established lower beam aiming plane until the upper beam unit or the geometric center of all upper beam contributors is centered in the photometric axis.

(h) *Moveable reflector aimed headlamps.* A headlamp aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, must conform to the photometrics applicable to it with the lens at any specified position relative to the reflector. These positions include not less than ±2.5° from the nominal horizontal aim position for the vehicle on which the headlamp is installed, and not less than the full range of vertical pitch of the vehicle on which the headlamp is installed.

(i) *Motorcycle headlamp-upper beam headlamps designed to comply with Table XX.* The upper beam of a multiple beam headlamp designed to comply with the requirements of Table XX must be aimed photoelectrically so that the center of the zone of highest intensity falls 0.4° vertically below the lamp axis and is centered laterally. The center of the zone of highest intensity must be established by the intersection of a horizontal plane passing through the point of maximum intensity, and the vertical plane established by balancing the photometric values at 3°L and 3°R.

(j) *Motorcycle headlamp-lower beam headlamps designed to comply with Table XX.* The beam from a single beam headlamp designed to comply with the requirements of Table XX must be aimed straight ahead with the top of the beam aimed vertically to obtain 2000 cd at H–V.

S6.8.5.6.3 *Positioner.* The goniometer configuration, used to position the sample headlamp when making photometric measurements at specific angular test points, is horizontal rotation over elevation. The vertical axis of the goniometer must correspond to the design position vertical axis of the

sample headlamp which is vertical and perpendicular to the longitudinal axis of the vehicle.

S6.8.5.6.4 *Photometer.* The photometer must be capable of measuring the luminous intensity of the sample headlamp throughout its illumination range. The maximum effective area of the photometric sensor must fit within a circle whose diameter is equal to 0.009 times the actual test distance from the light source of the sample headlamp to the sensor. The sensor effective area is defined as the actual area of intercepted light striking the detector surface of the photometer. Sensor systems incorporating lens(es) that change the diameter of the intercepted light beam before it reaches the actual detector surface, the maximum size requirements must apply to the total area of the light actually intercepted by the lens surface. The sensor must be capable of intercepting all direct illumination from the largest illuminated dimension of the sample lamp at the test distance. The color response of the photometer must be corrected to that of the 1931 International Commission on Illumination (C.I.E.) Standard Observer (2°) Photopic Response Curve.

S6.8.5.6.5 *Location of test points.* Test point positions are defined by the positioner. The following nomenclature applies: The letters ''V'' and ''H'' designate the vertical and horizontal planes intersecting both the headlamp light source and the photometer axis. ''H)–V'' designates the zero test point angle at the intersection of the H and V planes. This intersection is parallel to the longitudinal axis of the vehicle. The letters ''U'', ''D'', ''L'', and ''R'', indicating up, down, left and right respectively, designate the angular position from the H and V planes to the photometer as viewed from the headlamp. Horizontal angles designated L and R are defined as the plan view angle between the vertical plane and the projection of the light ray from the headlamp onto the horizontal plane. Vertical angles designated U and D are defined as the true angle between the horizontal plane and the light ray from the headlamp. Test points in the area from 10° U to 90° U must be measured from the normally exposed surface of the lens face.

S6.8.5.6.6 *Beam contributor photometry.* In a headlighting system where there is more than one beam contributor providing a lower beam, and/or more than one beam contributor providing an upper beam, each beam contributor must be designed to meet only the applicable photometric performance requirements based upon the following mathematical expression: conforming test point value=2 (test point value)/total number of lower or upper beam contributors for the vehicle, as appropriate.

S7 *Signal lamps, reflective devices, and associated equipment requirements.*

S7.1 *Turn signal lamps.*

S7.1.1 *Front turn signal lamps.*

S7.1.1.1 *Photometry.* Each front turn signal lamp, except for one installed on a motorcycle, must be designed to conform to the base photometry requirements of Table VI, when tested according to the procedure of S6.8.5.1., for the number of lamp compartments or individual lamps and the type of vehicle it is installed on. A front turn signal lamp installed on a motorcycle must be designed to conform to ½ the base photometry requirements otherwise specified in Table VI.

S7.1.1.2 *Spacing to other lamps.* Each front turn signal lamp must also be designed to comply to any additional photometry requirements based on its installed spacing to other lamps as specified by this section. Where more than one spacing relationship exists for a turn signal lamp the requirement must be the one that specifies the highest luminous intensity multiplier of Table VI.

S7.1.1.2.1 *Spacing measurement for non-reflector lamps.* For any front turn signal lamp that does not employ a reflector to meet photometric requirements, the spacing must be measured from the light source of the turn signal lamp to the lighted edge of any low beam headlamp, or any lamp such as an auxiliary low beam headlamp or fog lamp used to supplement the low beam headlamp.

S7.1.1.2.2 *Spacing measurement for lamps with reflectors.* For any front turn signal lamp which employs a reflector, such as a parabolic reflector, to meet photometric requirements, the spacing must be measured from the geometric centroid of the turn signal lamp functional lighted area to the lighted edge of any low beam headlamp, or any lamp such as an auxiliary low beam headlamp or fog lamp used to supplement the low beam headlamp.

S7.1.1.2.3 *Spacing based photometric multipliers.* Where the spacing measurement of S7.1.1.2.1 or S7.1.1.2.2 between a turn signal lamp and the lighted edge of any lamp such as an auxiliary low beam headlamp or fog lamp used to supplement the low beam headlamp is at least 75 mm. but less than 100 mm. the photometric multiplier of Table VI must be 1.5.; where the spacing measurement is at least 60 mm. but less than 75 mm. the photometric multiplier must be 2.0.; where the spacing measurement is less than 60 mm. the photometric multiplier must be 2.5. Where the spacing measurement of S7.1.1.2.1 or S7.1.1.2.2 between a turn signal lamp and the lighted edge of any lower beam headlamp is less than 100 mm. the photometric multiplier must be 2.5.

S7.1.1.3 *Multiple compartments and multiple lamps.* A multiple compartment lamp or multiple lamps may be used to meet the photometric requirements of a front turn signal lamp. If a multiple compartment lamp or multiple lamps are used on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, and the distance between adjacent light sources does not exceed 560 mm. for two compartment or lamp arrangements and does not exceed 410 mm. for three compartments or lamp arrangements, then the combination of the compartments or lamps must be used to meet the photometric requirements for the corresponding number of lighted sections specified in Table VI. If the distance between adjacent light sources exceeds the previously stated dimensions, each compartment or lamp must comply with the photometric requirements for one lighted section specified in Table VI.

S7.1.1.3.1 *Lamps installed on vehicles 2032 mm. or more in overall width.* Multiple compartment front turn signal lamps installed on multipurpose passenger vehicles, trucks, and buses 2032 mm. or more in overall width must meet the photometric requirements specified for a single section and not for individual compartments.

S7.1.1.3.2 *Ratio to parking lamps and clearance lamps.* When a parking lamp, or a clearance lamp on a multipurpose passenger vehicle, truck, trailer, or bus of 2032 mm. or more in overall width, is combined with a turn signal lamp, the luminous intensity of the turn signal lamp at each identified test point must not be less than the luminous intensity of the parking lamp or clearance lamp at that same test point times the multiplier shown for that test point in Table VI. If a multiple compartment or multiple lamp arrangement is used on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, and the distance between the optical axes for both the parking lamp and turn signal lamp is within 560 mm. for two compartment or lamp arrangements or 410 mm. for three compartments or lamp arrangements, then the ratio must be computed with all compartments or lamps lighted. If a multiple compartment or multiple lamp

arrangement is used and the distance between optical axes for one of the functions exceeds 560 mm. for two compartment or lamp arrangements or 410 mm. for three compartments or lamp arrangements, then the ratio must be computed for only those compartments or lamps where the parking lamp and turn signal lamp are optically combined. Where the clearance lamp is combined with the turn signal lamp, and the maximum luminous intensity of the clearance lamp is located below horizontal and within an area generated by a 1.0° radius around a test point, the ratio for the test point may be computed using the lowest value of the clearance lamp luminous intensity within the generated area.

S7.1.2 *Rear turn signal lamps.*

S7.1.2.1 *Photometry.* Each rear turn signal lamp must be designed to conform to the photometry requirements of Table VII, when tested according to the procedure of S6.8.5.1, for the number of lamp compartments or individual lamps, the type of vehicle it is installed on, and the lamp color as specified by this section. A rear turn signal lamp installed on a motorcycle must be designed to conform to ½ the photometry requirements otherwise specified in Table VII.

S7.1.2.2 *Multiple compartments and multiple lamps.* A multiple compartment lamp or multiple lamps may be used to meet the photometric requirements of a rear turn signal lamp. If a multiple compartment lamp or multiple lamps are used on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, and the distance between adjacent light sources does not exceed 560 mm. for two compartment or lamp arrangements and does not exceed 410 mm. for three compartments or lamp arrangements, then the combination of the compartments or lamps must be used to meet the photometric requirements for the corresponding number of lighted sections specified in Table VII. If the distance between adjacent light sources exceeds the previously stated dimensions, each compartment or lamp must comply with the photometric requirements for one lighted section specified in Table VII.

S7.1.2.2.1 *Lamps installed on vehicles 2032 mm. or more in overall width.* Multiple compartment rear turn signal lamps installed on multipurpose passenger vehicles, trucks, and buses 2032 mm. or more in overall width must meet the photometric requirements specified for a single section and not for individual compartments.

S7.1.2.3 *Ratio to taillamps and clearance lamps.* When a taillamp, or a clearance lamp on a multipurpose passenger vehicle, truck, trailer, or bus of 2032 mm. or more in overall width, is combined with a turn signal lamp, the luminous intensity of the turn signal lamp at each identified test point must not be less than the luminous intensity of the taillamp or clearance lamp at that same test point times the multiplier shown for that test point in Table VII. If a multiple compartment or multiple lamp arrangement is used on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, and the distance between the optical axes for both the taillamp and turn signal lamp is within 560 mm. for two compartment or lamp arrangements or 410 mm. for three compartments or lamp arrangements, then the ratio must be computed with all compartments or lamps lighted. If a multiple compartment or multiple lamp arrangement is used and the distance between optical axes for one of the functions exceeds 560 mm. for two compartment or lamp arrangements or 410 mm. for three compartments or lamp arrangements, then the ratio must be computed for only those compartments or lamps where the taillamp and turn signal lamp are optically combined. Where the taillamp or clearance lamp is combined with the turn signal lamp, and the maximum luminous intensity of the taillamp or clearance lamp is located below horizontal and within an area generated by a 0.5° radius around a test point for a taillamp on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, or by a 1.0° radius around a test point for a taillamp or clearance lamp on a vehicle 2032 mm. or more in overall width, the ratio for the test point may be computed using the lowest value of the taillamp or clearance lamp luminous intensity within the generated area.

S7.1.3 *Physical tests.* Each turn signal lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.1.4 *Combined lamp bulb indexing.* Each turn signal lamp optically combined with a taillamp, or a parking lamp or clearance lamp where installed on a vehicle 2032 mm. or more in overall width, where a two-filament bulb is used must have a bulb with an indexing base and a socket designed so that bulbs with non-indexing bases cannot be used. Removable sockets must have an indexing feature so that they cannot be re-inserted into lamp housings in random positions, unless the lamp will perform its intended function with random light source orientation.

S7.2 *Taillamps.*

S7.2.1 *Photometry.* Each taillamp must be designed to conform to the photometry requirements of Table VIII, when tested according to the procedure of S6.8.5.1, for the number of lamp compartments or individual lamps and the type of vehicle it is installed on.

S7.2.1.1 *Multiple compartments and multiple lamps.* A multiple compartment lamp or multiple lamps may be used to meet the photometric requirements of a taillamp. If a multiple compartment lamp or multiple lamps are used and the distance between the optical axes does not exceed 560 mm. for two compartment or lamp arrangements and does not exceed 410 mm. for three compartments or lamp arrangements, then the combination of the compartments or lamps must be used to meet the photometric requirements for the corresponding number of lighted sections specified in Table VIII. If the distance between optical axes exceeds the previously stated dimensions, each compartment or lamp must comply with the photometric requirements for one lighted section specified in Table VII.

S7.2.1.1.1 *Taillamps installed on vehicles 2032 mm. or more in overall width.* A maximum of two taillamps and/or two compartments per side may be mounted closer together than 560 mm. providing that each compartment and/or lamp meets the single lighted section photometric requirements specified in Table VII. Each lamp and/or compartment utilized in this manner must meet the single lighted section requirements for all functions for which it is designed.

S7.2.2 *Physical tests.* Each taillamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.3 *Stop lamps.*

S7.3.1 *Photometry.* Each stop lamp must be designed to conform to the photometry requirements of Table IX, when tested according to the procedure of S6.8.5.1, for the number of lamp compartments or individual lamps and the type of vehicle it is installed on.

S7.3.1.1 *Multiple compartments and multiple lamps.* A multiple compartment lamp or multiple lamps may be used to meet the photometric

requirements of a stop lamp. If a multiple compartment lamp or multiple lamps are used on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, and the distance between adjacent light sources does not exceed 560 mm. for two compartment or lamp arrangements and does not exceed 410 mm. for three compartments or lamp arrangements, then the combination of the compartments or lamps must be used to meet the photometric requirements for the corresponding number of lighted sections specified in Table IX. If the distance between adjacent light sources exceeds the previously stated dimensions, each compartment or lamp must comply with the photometric requirements for one lighted section specified in Table IX.

S7.3.1.1.1 *Lamps installed on vehicles 2032 mm. or more in overall width.* Multiple compartment stop lamps installed on multipurpose passenger vehicles, trucks, and buses 2032 mm. or more in overall width must meet the photometric requirements specified for a single section and not for individual compartments.

S7.3.1.2 *Ratio to taillamps.* When a taillamp is combined with a stop lamp, the luminous intensity of the stop lamp at each identified test point must not be less than the luminous intensity of the taillamp at that same test point times the multiplier shown for that test point in Table IX. If a multiple compartment or multiple lamp arrangement is used on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, and the distance between the optical axes for both the taillamp and stop lamp is within 560 mm. for two compartment or lamp arrangements or 410 mm. for three compartments or lamp arrangements, then the ratio must be computed with all compartments or lamps lighted. If a multiple compartment or multiple lamp arrangement is used and the distance between optical axes for one of the functions exceeds 560 mm. for two compartment or lamp arrangements or 410 mm. for three compartments or lamp arrangements, then the ratio must be computed for only those compartments or lamps where the taillamp and stop lamp are optically combined. Where the taillamp is combined with the stop lamp, and the maximum luminous intensity is located below horizontal and within an area generated by a 0.5° radius around a test point for a taillamp on a passenger car or on a multipurpose passenger vehicle, truck, bus, or trailer of less than 2032 mm. in overall width, or by a 1.0° radius around a test point for a taillamp on a vehicle 2032 mm. or more in overall width, the ratio for the test point may be computed using the lowest value of the taillamp luminous intensity within the generated area.

S7.3.2 *Physical tests.* Each stop lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.3.3 *Combined lamp bulb indexing.* Each stop lamp optically combined with a taillamp where a two-filament bulb is used must have a bulb with an indexing base and a socket designed so that bulbs with non-indexing bases cannot be used. Removable sockets must have an indexing feature so that they cannot be re-inserted into lamp housings in random positions, unless the lamp will perform its intended function with random light source orientation.

S7.4 *Side marker lamps.*

S7.4.1 *Photometry.* Each side marker lamp must be designed to conform to the photometry requirements of Table X, when tested according to the procedure of S6.8.5.1, for the lamp color as specified by this section.

S7.4.1.1 *Inboard photometry.* For each motor vehicle less than 30 feet in overall length and less than 2032 mm. in overall width, the minimum photometric intensity requirements for a side marker lamp may be met for all inboard test points at a distance of 15 feet from the vehicle and on a vertical plane that is perpendicular to the longitudinal axis of the vehicle and located midway between the front and rear side marker lamps.

S7.4.2 *Physical tests.* Each side marker lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.5 *Clearance and identification lamps.*

S7.5.1 *Photometry.* Each clearance or identification lamp must be designed to conform to the photometry requirements of Table XI, for the applicable lamp color, when tested according to the procedure of S6.8.5.1.

S7.5.2 *Physical tests.* Each clearance or identification lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.6 *Backup lamps.*

S7.6.1 *Photometry.* Each backup lamp must be designed to conform to the photometry requirements of Table XII, when tested according to the procedure of S6.8.5.1, as specified by this section.

S7.6.2 *Color.* A backup lamp may project incidental red, yellow, or white light through reflectors or lenses that are adjacent, close to, or a part of the lamp assembly.

S7.6.3 *Physical tests.* Each backup lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.7 *License plate lamps.*

S7.7.1 *Installation.*

Each license plate lamp installed on a vehicle other than a motorcycle or motor driven cycle must be of such size and design as to provide illumination on all parts of a 150 mm. by 300 mm. test plate. Each license plate lamp installed on a motorcycle or motor driven cycle must be of such size and design as to provide illumination on all parts of a 100 mm. by 175 mm. test plate. The light rays must reach all portions of an imaginary plate of the same size at least 25 mm. ahead of the actual plate measured perpendicular to the plane of the plate.

S7.7.1.1 *Incident light from single lamp.* When a single lamp is used to illuminate the license plate, the lamp and license plate holder must bear such relation to each other that at no point on the plate must the incident light make an angle of less than 8° to the plane of the plate, this angle being measured from the edge of the light emitting surface of the lamp farthest from the surface of the plate.

S7.7.1.2 *Incident light from multiple lamps.* When two or more lamps are used to illuminate the license plate, the minimum 8° incident light angle must apply only to that portion of the plate which the particular lamp is designed to illuminate. The angle must be measured in the same manner as S7.7.1.1.

S7.7.2 *Photometry requirements.* Each license plate lamp must be designed to conform to the photometry requirements of this section when tested according to the procedure of S6.8.5.3. An illumination value of no less than 8 lx [0.75 fc.] must be met at each test station target location shown in Table XIII. The ratio of the average of the two highest illumination values divided by the average of the two lowest illumination values must not exceed 20:1 for vehicles other than motorcycles and motor driven cycles. The ratio of the highest illumination value divided by the average of the two lowest illumination values must not exceed 15:1 for motorcycles and motor driven cycles.

S7.7.3 *Physical tests.* Each license plate lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.8 *Parking lamps.*

S7.8.1 *Photometry.* Each parking lamp must be designed to conform to the photometry requirements of Table XIV, when tested according to the procedure of S6.8.5.1, as specified by this section.

S7.8.2 *Physical tests.* Each parking lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.9 *High-mounted stop lamps.*

S7.9.1 *Accessibility.* Each high-mounted stop lamp must provide access for convenient replacement of bulbs without special tools.

S7.9.2 *Interior mounting.* When any high-mounted stop lamp is mounted inside the vehicle, means must be provided to minimize reflections from the light of the lamp upon the rear window glazing that might be visible to the driver when viewed directly, or indirectly in the rearview mirror.

S7.9.3 *Photometry.* Each high-mounted stop lamp must be designed to conform to the photometry requirements of Table XV, when tested according to the procedure of S6.8.5.1, as specified by this section.

S7.9.4 *Physical tests.* Each high-mounted stop lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII, except that any high-mounted stop lamp mounted inside the vehicle is not required to meet the requirements of the moisture test, dust test, and corrosion test.

S7.10 *Reflex reflectors.*

S7.10.1 *Photometry.* Each reflex reflector must be designed to conform to the photometry requirements of Table XVI when tested according to the procedure of S6.8.5.4.1. for the lamp color as specified by this section.

S7.10.1.1 *Alternative side reflex reflector.* Reflective material conforming to Federal Specification L–S–300, *Sheeting and Tape, Reflective; Non-exposed Lens, Adhesive Backing* (September 7, 1965), may be used for side reflex reflectors if this material as used on the vehicle, meets the performance requirements of Table XVI.

S7.10.2 *Physical tests.* Each reflex reflector must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test of Table XXII.

S7.11 *Daytime running lamps (DRLs).*

S7.11.1 *Photometry.* Each DRL must have a luminous intensity not less than 500 cd. at test point H-V, nor more than 3,000 cd. at any location in the beam when tested according to the procedure of S6.8.5.5 as specified by this section, unless it is:

(a) A lower beam headlamp intended to operate as a DRL at full voltage, or a voltage lower than used to operate it as a lower beam; or

(b) An upper beam headlamp intended to operate as a DRL, whose luminous intensity at test point H-V is not more than 7,000 cd., and whose mounting height is not higher than 864 mm.

S7.11.2 *Spacing to turn signal lamps.*

S7.11.2.1 Each DRL optically combined with a turn signal lamp must be automatically deactivated as a DRL when the turn signal lamp or hazard warning lamp is activated, and automatically reactivated as a DRL when the turn signal lamp or hazard warning lamp is deactivated.

S7.11.2.2 Each DRL not optically combined with a turn signal lamp must be located on the vehicle so that the distance from its lighted edge to the optical center of the nearest turn signal lamp is not less than 100 mm. unless:

(a) The luminous intensity of the DRL is not more than 2,600 cd. at any location in the beam and the turn signal lamp meets 2.5 times the base front turn signal photometric requirements: or,

(b) The DRL is optically combined with a lower beam headlamp and the turn signal lamp meets 2.5 times the base front turn signal photometric requirements: or,

(c) The DRL is deactivated when the turn signal or hazard warning signal lamp is activated.

S7.11.3 *Physical tests.* Each DRL must be designed to conform to the performance requirements associated with the color test and plastic optical material test requirements of Table XXII.

S7.12 *Conspicuity systems.* The requirement for conspicuity systems may be met with retroreflective sheeting, conspicuity reflex reflectors, or a combination of retroreflective sheeting and conspicuity reflex reflectors.

S7.12.1 *Retroreflective sheeting.* Retroreflective sheeting must consist of a smooth, flat, transparent exterior film with retroreflective elements embedded or suspended beneath the film so as to form a non-exposed retroreflective optical system. Retroreflective sheeting must meet the requirements, except photometry, of ASTM D 4956–90, *Standard for Retroreflective Sheeting for Traffic Control,* for Type V Sheeting. Sheeting of Grade DOT–C2 of no less than 50 mm. wide, Grade DOT–C3 of no less than 75 mm. wide, or Grade DOT–C4 of no less than 100 mm. wide may be used.

S7.12.1.1 *Certification marking.* The letters DOT–C2, DOT–C3, or DOT–C4, as appropriate, constituting a certification that the retroflective sheeting conforms to the requirements of this standard, must appear at least once on the exposed surface of each white or red segment of retroreflective sheeting, and at least once every 300 mm. on retroreflective sheeting that is white only. The characters must be not less than 3 mm. high, and must be permanently stamped, etched, molded, or printed in indelible ink.

S7.12.1.2 *Photometry.* Each retroreflective sheeting must be designed to conform to the photometry requirements of Table XVI when tested according to the procedure of S6.8.5.4.1 for the color and grade as specified by this section.

S7.12.2 *Conspicuity reflex reflectors.*

S7.12.2.1 *Certification marking.* The exposed surface of each reflex reflector must be marked with the letters DOT-C which constitutes a certification that the reflector conforms to the requirements of this standard. The certification must be not less than 3 mm. high, and must be permanently stamped, etched, molded, or printed in indelible ink.

S7.12.2.2 *Photometry.* Each red conspicuity reflex reflector must be designed to conform to the photometry requirements of Table XVI for a red reflex reflector and for a red conspicuity reflex reflector when tested according to the procedure of S6.8.5.4.1 as specified by this section. Each white conspicuity reflex reflector installed in only a horizontal orientation must be designed to conform to the photometry requirements of Table XVI for a white reflex reflector and for a white horizontal conspicuity reflex reflector when tested according to the procedure of S6.8.5.4.1 as specified by this section. Each white conspicuity reflex reflector installed in a vertical orientation must be designed to conform to the photometry requirements of Table XVI for a white reflex reflector, for a white horizontal conspicuity reflex reflector, and a white vertical conspicuity reflex reflector when tested according to the procedure of S6.8.5.4.1 as specified by this section.

S7.13 *School bus signal lamps.*

S7.13.1 *Photometry.* Each school bus signal lamp must be designed to conform to the photometry requirements of Table XVII, when tested according to the procedure of S6.8.5.1, for the lamp color as specified by this section.

S7.13.2 *Physical test requirements.* Each school bus signal lamp must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, color test, and plastic optical material test requirements of Table XXII.

S7.14 *Associated equipment.*

S7.14.1 *Turn signal operating unit.* The turn signal operating unit is that part of the turn signal system by which the operator of a vehicle causes the turn signal lamps to function. The turn signal operating unit installed on passenger cars, multipurpose passenger vehicles, trucks, and buses less than 2032 mm. in overall width must be self-canceling by steering wheel rotation and capable of cancellation by a manually operated control.

S7.14.2 *Turn signal flasher.* The turn signal flasher is that part of the turn signal system which causes the turn signal lamps to flash as long as it is energized. The means of producing the turn signal pilot indicator signal may be incorporated in the flasher. A means of producing an audible signal may be incorporated in the flasher.

S7.14.3 *Turn signal pilot indicator.* Each vehicle equipped with a turn signal operating unit must also have an illuminated pilot indicator to provide a clear and unmistakable indication that the turn signal system is activated. The indicator must consist of one or more lights flashing at the same frequency as the turn signal lamps. The indicator must function satisfactorily under all test conditions imposed on the turn signal flasher in Table III.

S7.14.3.1 *Indicator size and color.* If the indicator is located inside the vehicle, it should emit a green light and have a minimum area of 18 sq. mm. If the indicator is located outside of the vehicle it should emit a yellow light and have a minimum area of 60 sq. mm. The minimum required illuminated area of the indicator must be visible according to the procedures described in SAE J1050, *Describing and Measuring the Driver's Field of View,* with the steering wheel turned to a straight ahead driving position and in the design location for an adjustable wheel and column.

S7.14.3.2 *Turn signal lamp failure.* Failure of one or more turn signal lamps such that the minimum photometric performance specified in Tables VI or VII is not being met must be indicated by the turn signal pilot indicator, except when a variable-load turn signal flasher is used on a multipurpose passenger vehicle, truck, or bus 2032 mm. or more in overall width, on a truck that is capable of accommodating a slide in camper, or on any vehicle equipped to tow trailers.

S7.14.4 *Headlamp beam switching device.* Each vehicle must have a means of switching between lower and upper beams designed and located so that it may be operated conveniently by a simple movement of the driver's hand or foot. The switch should have no dead point and, except as provided by S8.2, the lower and upper beams must not be energized simultaneously except momentarily for temporary signaling purposes or during switching between beams.

S7.14.4.1 *Semi-automatic headlamp beam switching device.* As an alternative to S7.14.4. a vehicle may be equipped with a semi-automatic means of switching between lower and upper beams as specified by this standard and as specified in Table III.

S7.14.4.1.1 *Operating instructions.* Each semi-automatic headlamp switching device must include operating instructions to permit a driver to operate the device correctly including; how to turn the automatic control on and off, how to adjust the provided sensitivity control, and any other specific instructions applicable to the particular device.

S7.14.4.1.2 *Manual override.* The device must include a means convenient to the driver for switching to the opposite beam from the one provided.

S7.14.4.1.3 *Fail-safe operation.* A failure of the automatic control portion of the device must not result in the loss of manual operation of both upper and lower beams.

S7.14.4.1.4 *Automatic dimming indicator.* There must be a convenient means of informing the driver when the device is controlling the headlamps automatically.

S7.14.4.1.5 *Lens accessibility.* The device lens must be accessible for cleaning when the device is installed on a vehicle.

S7.14.4.1.6 *Mounting height.* The center of the device lens must be mounted no less than 24 in. above the road surface.

S7.14.5 *Upper beam headlamp indicator.* Each vehicle must have a means for indicating to the driver when the upper beams of the headlighting system are on.

S7.14.5.1 *Indicator size, location, and color.* The upper beam headlamp indicator must have a minimum area equivalent to that of a 3/16 in. diameter circle, and be plainly visible to drivers of all heights under normal driving conditions when headlamps are required. The indicator color need not be red.

S7.14.6 *Vehicular hazard warning signal operating unit.* The vehicular hazard warning signal operating unit is a driver-controlled device which causes turn signal lamps to flash simultaneously to indicate to approaching drivers the presence of a vehicular hazard. The unit may be an independent device or it may be combined with the turn signal operating unit. If combined with the turn signal operating unit, the actuating motion of the hazard function must differ from the actuating motion of the turn signal function.

S7.14.6.1 *Operating unit switch.* The unit must operate independently of the ignition or equivalent switch. If the actuation of the hazard function requires the operation of more than one switch, a means must be provided for actuating all switches simultaneously by a single driver action.

S7.14.7 *Vehicular hazard warning signal flasher.* The vehicular hazard warning signal flasher is the device which causes the turn signal lamps designated as hazard warning lamps to simultaneously flash as long as it is energized. The means of producing the hazard warning signal pilot indicator signal may be incorporated in the flasher. A means of producing an audible signal may be incorporated in the flasher.

S7.14.8 *Vehicular hazard warning signal pilot indicator.* In vehicles equipped with right hand and left hand turn signal pilot indicators, both pilot indicators and/or a separate pilot indicator must flash simultaneously while the vehicle hazard warning signal operating unit is turned on. In vehicles equipped with a single turn signal pilot indicator, a separate vehicular hazard warning signal pilot indicator must flash and the turn signal pilot indicator may flash while the vehicle hazard warning signal operating unit is turned on. The indicator must function satisfactorily under all test conditions imposed on the hazard warning signal flasher in Table III.

S7.14.8.1 *Indicator size and color.* If a separate vehicular hazard warning pilot indicator is used, it must emit a red color and have a minimum area equivalent to a 0.5 in. diameter circle.

S8 *Headlighting system requirements.*

S8.1 *Headlighting systems.* Each passenger car, multipurpose passenger vehicle, truck and bus must be equipped with a headlighting system conforming to the requirements of Table II and this

standard. Each motorcycle must be equipped with a headlighting system conforming to S13 of this standard or one half of any headlighting system of Table II which provides both a full upper beam and full lower beam.

S8.1.1 *Headlighting system type.* The headlighting system installed on any vehicle covered by this section must be of the two lamp type or the four lamp type.

S8.1.2 *Headlamp category.* The headlighting system installed on any vehicle covered by this section must be of one of the categories listed in Table II.

S8.1.3 *Vertical headlamp arrangement.* Where multiple headlamps with single light sources are installed in a vertical orientation the lower beam must be provided by the uppermost headlamp. Where headlamps with two vertically oriented light sources are installed the lower beam must be provided by the uppermost light source or by all light sources. Where more than one lamp must be used for a motorcycle headlighting system, the lamps must be mounted vertically, with the lower beam as high as practicable.

S8.1.4 *Horizontal headlamp arrangement.* Where multiple headlamps with single light sources are installed in a horizontal orientation the lower beam must be provided by the most outboard headlamp. Where headlamps with two horizontally oriented light sources are installed the lower beam must be provided by the outboard light source or by all light sources.

S8.1.5 *Headlamp adjustments.* The axis of the light beams must be adjustable to the left, right, up, or down from the designed setting, the amount of adjustability to be determined by practical operating conditions and the type of equipment. The adjustments must be conveniently made by one person with tools ordinarily available. When the headlamps are secured, the aim will not be disturbed under ordinary conditions of service.

S8.2 *Simultaneous beam activation.* On any vehicle covered by this section where the headlighting system is designed to conform to the photometric requirements of UB1 of Table XVIII and LB1M or LB1V of Table XIX, the lamps marked ''L'' or ''LF'' may remain permanently activated when the lamps marked ''U'' or ''UF'' are activated. On any vehicle covered by this section where an integral beam headlighting system is designed to conform to the photometric requirements of UB1 of Table XVIII and LB5M or LB4V of Table XIX, the lower beam headlamps must remain permanently activated when the upper beam headlamps are activated. On any vehicle covered by this section where the headlighting system is designed to conform to the photometric requirements of UB2 of Table XVIII and LB2M or LB2V of Table XIX, a lower beam light source may remain permanently activated when an upper beam light source is activated if the lower beam light source contributes to the upper beam compliance of the headlighting system.

S9 *Sealed beam headlamp requirements.* All sealed beam headlamps must be of a type designated in Table II-a. Each sealed beam headlamp must conform to the dimensions and electrical specifications furnished with respect to it pursuant to Appendix C of part 564 of this chapter and Table II-a of this standard. The dimensions applicable to the design of a specific type are those identified with an ''I'' for interchangeability shown on the applicable drawing(s) filed in Docket No. NHTSA 98–3397.

S9.1 *Installation.* A sealed beam headlighting system must consist of the correct number of designated headlamp units shown for the specific system in Table II-a. The units must have their beams activated as shown in Table II-a.

S9.2 *Simultaneous aim.* Type F sealed beam headlamps may be mounted on common or parallel seating and aiming planes to permit simultaneous aiming of both headlamps provided that there must be no provision for adjustment between the common or parallel aiming and seating planes of the two lamps, and when tested with any conforming Type UF and LF headlamps in accordance with S6.8.5.6 the assembly (consisting of the Type UF and LF headlamps, mounting rings, the aiming/seating rings, and aim adjustment mechanism) must be designed to conform to the appropriate photometric requirements.

S9.3 *Photometry.* Each sealed beam headlamp must be designed to conform to the photometry requirements of Table XVIII for upper beam and Table XIX for lower beam as specified in Table II for the specific headlamp unit and aiming method, when tested according to the procedure of S6.8.5.6.

S9.4 *Physical tests.* Each sealed beam headlamp must be designed to conform to the performance requirements associated with Table XXIII and the performance requirements associated with the color test and the plastic optical materials test, if applicable, of Table XXII.

S10 *Integral beam headlamp requirements.* All integral beam headlamps must be of a type designated in Table II-c.

S10.1 *Installation.* An integral beam headlighting system must consist of the correct number of designated headlamp units shown for the specific system in Table II-c. The units must have their beams mechanized as shown in Table II-c. A system must provide in total not more than two upper beams and two lower beams.

S10.2 *Aimability.* An integral beam headlighting system must be aimable in accordance with the requirements of S14. A system that incorporates any headlamp or beam contributor that does not have a VHAD as an integral and indivisible part of the headlamp or beam contributor must be designed so that the appropriate photometric requirements are met when any correctly aimed and photometrically conforming headlamp or beam contributor is removed from its mounting and aiming mechanism, and is replaced without reaim by any conforming headlamp or beam contributor of the same type.

S10.3 *Simultaneous aim.* An integral beam headlighting system consisting of four individual headlamps or beam contributors may have the headlamp units mounted in an assembly to permit simultaneous aiming of the beam(s) contributors, providing that with any complying contributor the assembly complete with all lamps meets the appropriate photometric requirements when tested in accordance with S6.8.5.6.

S10.4 *Markings.* An integral beam headlamp with a single light source providing lower beam must have its lens permanently marked with ''L''. An integral beam headlamp with a single light source providing upper beam must have its lens permanently marked with ''U''.

S10.5 *Additional light sources.* An integral beam headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S10.6 *Photometry.* Each integral beam headlamp must be designed to conform to the photometry requirements of Table XVIII for upper beam and Table XIX for lower beam as specified in Table II for the specific headlamp unit and aiming method, when tested according to the procedure of S6.8.5.6.

S10.7 *Physical tests.* Each integral beam headlamp must be designed to conform to the performance requirements associated with Table XXIII and the performance requirements associated with the color test and the plastic optical materials test, if applicable, of Table XXII.

S11 *Replaceable bulb headlamp requirements.* All replaceable bulb headlamps must be of a type designated in Table II-d.

S11.1 *Installation.* A replaceable bulb headlighting system must consist of the correct number of designated headlamp units shown for the specific system in Table II-d. The units must have their beams activated as shown in Table II-d. A system must provide in total not more than two upper beams and two lower beams and must incorporate not more than two replaceable light sources in each headlamp.

S11.2 *Aiming restrictions.* Each replaceable bulb headlamp conforming to the external mechanical aim requirements of S14.8 must have no mechanism that allows adjustment of an individual light source, or if there are two light sources, independent adjustments of each reflector.

S11.3 *Additional light sources.* A replaceable bulb headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S11.4 *Replacement equipment.* Each lens reflector unit manufactured as replacement equipment must conform to applicable photometry requirements when any replaceable light source appropriate for such unit is inserted in it.

S11.5 *Markings.* A replaceable bulb headlamp in a four headlamp system providing lower beam must have its lens permanently marked with ''L''. A replaceable bulb headlamp in a four headlamp system providing upper beam must have its lens permanently marked with ''U''.

S11.6 *Photometry.* Each replaceable bulb headlamp must be designed to conform to the photometry requirements of Table XVIII for upper beam and Table XIX for lower beam as specified in Table II-d for the specific headlamp unit and aiming method, when tested according to the procedure of S6.8.5.6 using any replaceable light source intended for use in the system under test.

S11.7 *Physical tests.* Each replaceable bulb headlamp must be designed to conform to the performance requirements associated with Table XXIII and the performance requirements associated with the color test and the plastic optical materials test, if applicable, of Table XXII.

S12 *Combination headlamps.* All combination headlamps must be of a type designated in Table II-b.

S12.1 *Installation.* A combination headlighting system must consist of the number of designated headlamp units shown for the specific system in Table II-b. The units must have their beams mechanized as shown in Table II-b. A system must provide in total not more than two upper beams and two lower beams. When installed on a motor vehicle, the headlamps (or parts thereof) that provide the lower beam must be of the same type, and provide a symmetrical effective projected luminous lens area when illuminated.

S12.2 *Photometry.* Each combination headlamp must be designed to conform to the photometry requirements of Table XVIII for upper beam and Table XIX for lower beam as specified in Table II-b for the specific headlamp unit and aiming method, when tested according to the procedure of S6.8.5.6.

S12.3 *Physical tests.* The component headlamps of any combination headlamp must be designed to conform to the performance requirements associated with Table XXIII and the performance requirements associated with the color test and the plastic optical materials test, if applicable, of Table XXII.

S13 *Motorcycle headlamp requirements.* A motorcycle headlighting system may consist of:

(a) One half of any headlighting system of Table II which provides both a full upper beam and full lower beam, and conforms to the requirements for that headlamp type. Where more than one lamp must be used, the lamps shall be mounted vertically, with the lower beam as high as practicable, or

(b) A headlighting system conforming to the requirements of this section.

S13.1 *Installation.* The headlamp system installed on a motorcycle must be located on the front.

S13.1.1 *Single headlamp.* If the system consists of a single headlamp, it must be mounted on the vertical centerline of the motorcycle. If the headlamp contains more than one light source, each light source must be mounted on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and mounted at the same height. If the light sources are horizontally disposed about the vertical centerline, the distance between the closest edges of the effective projected luminous lens area in front of the light sources must not be greater than 200 mm.

S13.1.2 *Two headlamps with both beams.* If the system consists of two headlamps, each of which provides both an upper and lower beam, the headlamps must be mounted either at the same height and symmetrically disposed about the vertical centerline or mounted on the vertical centerline. If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas must not be greater than 200 mm.

S13.1.3 *Two headlamps, upper beam and lower beam.* If the system consists of two headlamps, one of which provides an upper beam and one of which provides the lower beam, the headlamps must be located on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and mounted at the same height. If the headlamps are horizontally disposed about the vertical centerline, the distance between the closest edges of their effective projected luminous lens areas must not be greater than 200 mm.

S13.2 *Photometry.* Each motorcycle headlamp that is not one half of a headlighting system listed in Table II, must be designed to conform to the photometry requirements of Table XX when tested according to the procedure of S6.8.5.6.

S13.3 *Physical tests.* Each motorcycle headlamp that is not one half of a headlighting system listed in Table II, must be designed to conform to the performance requirements associated with the vibration test, moisture test, dust test, corrosion test, out of focus test, color test, and plastic optical material test requirements of Table XXII.

S13.4 *Motorcycle replaceable bulb headlamp marking.* Each replaceable bulb headlamp conforming to requirements for motorcycle use and that is equipped with a light source other than a replaceable light source meeting the requirements of S15, must have the word 'motorcycle' permanently marked on the lens in characters not less than 3 mm in height.

S13.5 *Motorcycle headlamp modulation system.* A headlamp on a motorcycle may be activated to modulate either the upper beam or the lower beam from its maximum intensity to a lesser intensity, provided that;

S13.5.1. *Modulation.*

(a) The rate of modulation must be 240 ±40 cycles per minute.

(b) The headlamp must be operated at maximum power for 50 to 70 percent of each cycle.

(c) The lowest intensity at any test point must be not less than 17 percent of the maximum intensity measured at the same point.

(d) The modulator switch must be wired in the power lead of the beam filament being modulated and not in the ground side of the circuit.

(e) Means must be provided so that both the lower beam and upper beam remain operable in the event of a modulator failure.

(f) The system must include a sensor mounted with the axis of its sensing element perpendicular to a horizontal plane. Headlamp modulation must cease whenever the level of light emitted by a tungsten filament light operating at 3000° Kelvin is either less than 270 lux of direct light for upward pointing sensors or less than 60 lux of reflected light for downward pointing sensors. The light is measured by a silicon cell type light meter that is located at the sensor and pointing in the same direction as the sensor. A Kodak Gray Card (Kodak R–27) is placed at ground level to simulate the road surface in testing downward pointing sensors.

(g) When tested in accordance with the test profile shown in Figure 9, the voltage drop across the modulator when the lamp is on at all test conditions for 12 volt systems and 6 volt systems must not be greater than 0.45 volt. The modulator must meet all the provisions of the standard after completion of the test profile shown in Figure 9.

(h) Means must be provided so that both the lower and upper beam function at design voltage when the headlamp control switch is in either the lower or upper beam position when the modulator is off.

S13.5.2 *Replacement modulators.* Each motorcycle headlamp modulator not intended as original equipment, or its container, must be labeled with the maximum wattage, and the minimum wattage appropriate for its use.

S13.5.2.1 *Replacement performance.* Each modulator, not intended as original equipment, must comply with S13.5.1 (a) through (g) when connected to a headlamp of the maximum rated power and a headlamp of the minimum rated power, and must provide means so that the modulated beam functions at design voltage when the modulator is off.

S13.5.2.2 *Replacement instructions.* Instructions, with a diagram, must be provided for mounting the light sensor, including location on the motorcycle, distance above the road surface, and orientation with respect to the light.

S14 *Headlamp aimability performance requirements.*

S14.1 *Headlamp mounting and aiming.* Except as provided in this paragraph, each headlamp must be installed on a motor vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim, and is accessible for those purposes without removal of any vehicle parts, except for protective covers removable without the use of tools.

S14.2 *Headlamp obstructions.* When activated in a steady burning state, headlamps must not have any styling ornament or other feature, such as a translucent cover or grill, in front of the lens. Headlamp wipers may be used in front of the lens provided that the headlamp system is designed to conform with all applicable photometric requirements with the wiper stopped in any position in front of the lens.

S14.3. *Headlamp aiming systems.* When a headlamp system is installed on a motor vehicle, it must be aimable with at least one of the following: an externally applied aiming device, as specified in S14.8; an on-vehicle headlamp aiming device installed by the vehicle or lamp manufacturer, as specified in S14.9; or by visual/optical means, as specified in S14.10.

S14.4 *Aim adjustment interaction.* When installed on the vehicle, adjustment of one aim axis through its full on-vehicle range must not cause the aim of the other axis to deviate more than ±0.76°. If the performance specified is not achievable, the requirements of S14.4.1 apply, except that if the aiming mechanism is not a VHAD, the requirements specific to VHADs are not applicable, and the instruction must be specific to the aiming mechanism installed.

S14.4.1 Should the mechanism not meet the requirements above, a cautionary label must be placed adjacent to the mechanism stating the caution and including either the reason for the caution or the corrective action necessary. Each such label must also refer the reader to the vehicle operator's manual for complete instructions. Each such vehicle must be equipped with an operator's manual containing the complete instructions appropriate for the mechanism installed.

S14.5 *Horizontal adjustment-visually aimed headlamp.* A visually/optically aimable headlamp that has a lower beam must not have a horizontal adjustment mechanism unless such mechanism meets the requirements of this standard for a VHAD.

S14.6 *Optical axis marking.*

S14.6.1 *Optical axis marking-vehicle.* Each motor vehicle must be equipped with headlamps or beam contributors which have a mark or markings that are visible from the front of the headlamp when installed on the vehicle to identify the optical axis of the headlamp to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

S14.6.2 *Optical axis marking-lamp.* Each headlamp or beam contributor that is not visually/optically aimable in accordance with S14.10 of this standard must be equipped with fiducial marks, aiming pads, or similar references of sufficient detail and accuracy, for determination of an appropriate vehicle plane to be used with the photometric procedures of S6.8.5.6 for correct alignment with the photometer axis when being tested for photometric compliance, and to serve for the aiming reference when the headlamp or beam contributor is installed on a motor vehicle. The fiducial marks, aiming pads, or similar references are protrusions, bubble vials, holes, indentations, ridges, scribed lines, or other readily identifiable marks established and described by the vehicle or headlamp manufacturer.

S14.6.3 *Optical axis marking-visual aim headlamp.* There must be a mark or markings identifying the optical axis of the headlamp visible from the front of the headlamp when installed on the vehicle, to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

S14.7 *Moveable reflectors.* Each headlamp aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, must conform with the photometric requirements applicable to it when tested according to the procedure of S6.8.5.6 with the lens at any position relative to the reflector within the full range of vertical pitch on the vehicle on which the headlamp system is installed and a horizontal range of ±2.5°. Additionally, it must comply with the aiming adjustment requirements of Table XXIII.

S14.8 *External aiming.* Each headlamp system that is capable of being mechanically aimed by externally applied headlamp aiming devices must be mechanically aimable using the equipment specified in SAE J602, *Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units, October 1980,* without the removal of any ornamental trim rings, covers, wipers, or other vehicle parts.

S14.8.1 *Headlamp aiming device locating plates.* Each headlamp system which is designed to use the Headlamp Aiming Device Locating Plates with

adjustable legs for the 100x165 mm unit and the 142x200 mm unit, and which has adjustable length legs, must meet the following requirements.

S14.8.1.1 The lens must have three aiming pads which meet the requirements of Figure 4, *Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units.* The aiming pads need not be centered at the geometric center of the lens, or on the optical axis. Except as provided in S14.8.1.2, a whole number, which represents the distance in tenths of an inch (*i.e.* 0.3 inch=3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, must be inscribed adjacent to each respective aiming pad on the lens. The height of these numbers must be not less than .157 inch (4 mm). If there is interference between the plane and the area of the lens between the aiming pads, the whole number represents the distance to a secondary plane. The secondary plane must be located parallel to the aiming reference plane and as close to the lens as possible without causing interference.

S14.8.1.2 If the most forward aiming pad is the lower inboard aiming pad, then the dimensions may be placed anywhere on the lens. The dimension for the outboard aiming pad (Dimension F in Figure 4) must be followed by the letter ''H'' and the dimension for the center aiming pad must be followed by the letter ''V.'' The dimensions must be expressed in tenths of an inch, in the manner described in S14.8.1.1.

S14.8.2 *Nonadjustable headlamp aiming device locating plates.* Each headlamp may be designed to use the nonadjustable Headlamp Aiming Device Locating Plate for the 100x165 mm. unit, the 142x200 mm. unit, the 146 mm. diameter unit, or the 178 mm. diameter unit of SAE J602, or the 92x150 mm. Type F unit, and incorporate lens-mounted aiming pads as specified for those units in Figures a, b, c, d, or e of this standard. If so designed, no additional lens marking is necessary to designate the type of plate or dimensions.

S14.9 *On-vehicle aiming.* Each headlamp system that is capable of being aimed by equipment installed on the vehicle must include a Vehicle Headlamp Aiming Device (VHAD) that conforms to the following requirements:

S14.9.1 *Aim.* The VHAD must provide for headlamp aim inspection and adjustment in both the vertical and horizontal axes.

S14.9.1.1 *Vertical aim.* The VHAD must include the necessary references and scales relative to the horizontal plane to assure correct vertical aim for photometry and aiming purposes. An off-vehicle measurement of the angle of the plane of the ground is permitted. In addition, an equal number of graduations from the ''O'' position representing angular changes in the axis in the upward and downward directions must be provided.

S14.9.1.1.1 Each graduation must represent a change in the vertical position of the mechanical axis not larger than 0.19° (1 in. at 25 ft.) to provide for variations in aim at least 1.2° above and below the horizontal, and have an accuracy relative to the zero mark of less than 0.1°.

S14.9.1.1.2 The VHAD must be marked to indicate headlamp aim movement in the upward and downward directions.

S14.9.1.1.3 Each graduation must indicate a linear movement of the scale indicator of not less than 0.05 in. (1.27 mm) if a direct reading analog indicator is used. If a remote reading indicator is provided, it must represent the actual aim movement in a clear, understandable format.

S14.9.1.1.4 The vertical indicator must perform through a minimum range of ±1.2°.

S14.9.1.1.5 Means must be provided in the VHAD for compensating for deviations in floor slope less than 1.2° from the horizontal that would affect the correct positioning of the headlamp for vertical aim.

S14.9.1.1.6 The graduations must be legible under an illumination level not greater than 30 foot candles, measured at the top of the graduation, by an observer having 20/20 vision (Snellen), and must permit aim adjustment to within 0.19° (1 in. at 25 ft.).

S14.9.1.2 *Horizontal aim.* The VHAD must include references and scales relative to the longitudinal axis of the vehicle necessary to assure correct horizontal aim for photometry and aiming purposes. An ''O'' mark must be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle. In addition, an equal number of graduations from the ''O'' position representing equal angular changes in the axis relative to the vehicle axis must be provided.

S14.9.1.2.1 Each graduation must represent a change in the horizontal position of the mechanical axis not greater than 0.38° (2 in. at 25 ft.) to provide for variations in aim at least 0.76° (4 in. at 25 ft.) to the left and right of the longitudinal axis of the vehicle, and must have an accuracy relative to the zero mark of less than 0.1°.

S14.9.1.2.2 The VHAD must be marked to indicate headlamp aim movement in the left and right directions.

S14.9.1.2.3 The graduations must be legible under an illumination level not greater than 30 foot candles, measured at the top of the graduation, by an observer having 20/20 vision (Snellen), and must permit aim adjustment to within 0.38° (2 in. at 25 ft.).

S14.9.1.2.4 The horizontal indicator must perform through a minimum range of ±0.76° (4 in. at 25 ft.); however, the indicator itself must be capable of recalibration over a movement of ±2.5° relative to the longitudinal axis of the vehicle to accommodate any adjustment necessary for recalibrating the indicator after vehicle repair from accident damage.

S14.9.2 *Aiming instructions.*

S14.9.2.1 The instructions for properly aiming the headlighting system using the VHAD must be provided on a label permanently affixed to the vehicle adjacent to the VHAD, or in the vehicle operator's manual. The instructions must advise that the headlighting system is properly aimed if the appropriate vertical plane (as defined by the vehicle manufacturer) is perpendicular to both the longitudinal axis of the vehicle, and a horizontal plane when the vehicle is on a horizontal surface, and the VHAD is set at ''0'' vertical and ''0'' horizontal.

S14.9.2.2 Should a remote indicator or a remote indicator and adjuster be provided, the instructions must be placed in the operator's manual, and may also be placed on a label adjacent to the VHAD.

S14.9.3 *Permanent calibration.* Each headlamp equipped with a VHAD must be manufactured with its calibration permanently fixed by its manufacturer. Calibration in this case means the process of accurately aligning the geometry of the VHAD devices with the beam pattern for the purposes of compliance with the standard.

S14.9.4 *Replacement units.* When tested according to the procedure of S6.8.5.6. with any replacement headlamp unit(s) or light sources intended for use in the system under test, the VHAD and headlamp system must be designed to conform to the photometric performance requirements appropriate for the system under test.

S14.9.5 *Physical tests.* Each VHAD must comply with all applicable performance requirements of Table XXIII.

S14.10 *Visual/optical aiming.* Each visually/optically aimable headlamp must be designed to conform to the following requirements:

S14.10.1 *Vertical aim, lower beam.* Each lower beam headlamp must have

a cutoff in the beam pattern. It may be either on the left side or the right side of the optical axis, but once chosen for a particular headlamp system's design, the side chosen for the cutoff must not be changed for any headlamps intended to be used as replacements for those system's headlamps.

S14.10.1.1 *Vertical position of the cutoff.* The headlamp must be aimed vertically so that the cutoff is on the left side, at 0.4° down from the H–H line, or on the right side, at the H–H line.

S14.10.1.2 *Vertical gradient.* The gradient of the cutoff measured at either 2.5° L or 2.0° R must be not less than 0.13 based on the procedure of S14.10.1.5.

S14.10.1.3 *Horizontal position of the cutoff.* The width must be not less than 2°, with not less than 2° of its actual width centered at either 2.5° L, or 2.0° R.

S14.10.1.4 *Maximum inclination of the cutoff.* The vertical location of the highest gradient at the ends of the minimum width must be within ±0.2° of the vertical location of the maximum gradient measured at the appropriate vertical line (at either 2.5° L for a left side cutoff, or 2.0° R for a right side cutoff).

S14.10.1.5 *Measuring the cutoff parameter.*

S14.10.1.5.1 The headlamp is mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, is attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp is energized at the specified test voltage. The cutoff parameter must be measured at a distance of 10 m. from a photosensor with a 10 mm. diameter.

S14.10.1.5.2 The headlamp beam pattern is aimed with the cutoff at the H–H axis. There is no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD is adjusted to zero.

S14.10.1.5.3 A vertical scan of the beam pattern is conducted for a headlamp with a left side gradient by aligning the goniometer on a vertical line at 2.5° L and scanning from 1.5° U to 1.5° D. For a headlamp with a right side gradient, a vertical scan of the beam pattern is conducted by aligning the goniometer on a vertical line at 2.0° R and scanning from 1.5° U to 1.5° D.

S14.10.1.5.4 Determine the maximum gradient within the range of the scan by using the formula: $G = \log E(a) - \log E(a+0.1)$, where ''G'' is the gradient, ''E'' is illumination and ''a'' is vertical angular position. The maximum value of the gradient ''G'' determines the vertical angular location of the cutoff. Perform vertical scans at 1.0° L and R of the measurement point of the maximum gradient to determine the inclination.

S14.10.2 *Horizontal aim, lower beam.* There is no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it is set to zero.

S14.10.3 *Vertical aim, upper beam.*

S14.10.3.1 If the upper beam is combined in a headlamp with a lower beam, the vertical aim of the upper beam is not changed from the aim set using the procedures of S14.10.1. and S14.10.2 used for the lower beam.

S14.10.3.2 If the upper beam is not combined in a headlamp with a lower beam, the vertical aim of the upper beam is adjusted so that the maximum beam intensity is located on the H–H axis.

S14.10.4 *Horizontal aim, upper beam.*

S14.10.4.1 If the upper beam is combined in a headlamp with a lower beam, the horizontal aim of the upper beam is not changed from the aim set using the procedures of S14.10.1 and S14.10.2 used for the lower beam.

S14.10.4.2 If the upper beam is not combined in a headlamp with the lower beam and has fixed horizontal aim or has a horizontal VHAD, then the headlamp is mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, is attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp must be energized at 12.8 ± 0.20 mV. There is no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case, the VHAD is adjusted to zero.

S14.10.4.3. If the upper beam is not combined in a headlamp with a lower beam, and it does not have a VHAD, the horizontal aim of the upper beam is adjusted so that the maximium beam intensity is located on the V–V axis.

S14.10.5 *Photometric measurements.* A visually/optically aimable headlamp must be designed to conform to the lower beam requirements of columns LB1V, LB2V, LB3V, or LB4V of Table XIX when tested according to the procedure of S6.8.5.6.

S14.10.6 *Visual/optical identification marking.* Each letter used in marking according to this paragraph must be not less than 3 mm. high.

S14.10.6.1 The lens of a lower beam headlamp must be marked ''VOL'' if the headlamp is intended to be visually/optically aimed using the left side of the lower beam pattern. The lens of a lower beam headlamp must be marked ''VOR'' if the headlamp is intended to be visually/optically aimed using the right side of the lower beam pattern. The lens of a headlamp that is solely an upper beam headlamp and intended to be visually/optically aimed using the upper beam must be marked ''VO''.

S14.10.6.2 The lens of each sealed beam or integral beam headlamp must be marked ''VOR'' if the headlamp is of a type that was manufactured before May 1, 1997, and if such headlamp type has been redesigned since then to be visually/optically aimable.

S15 *Replaceable light sources.* Each replaceable light source must be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and must conform to the following requirements:

S15.1 *Markings.* If other than an HB Type, the light source must be marked with the bulb marking designation specified for it in compliance with Appendix A or Appendix B of part 564 of this chapter. The base of each HB Type must be marked with its HB Type designation. Each replaceable light source must also be marked with the symbol DOT and with a name or trademark in accordance with S17.1.

S15.2 *Power and flux measurement.* The measurement of maximum power and luminous flux that is submitted in compliance with Appendix A or Appendix B of part 564 of this chapter is made in accordance with this paragraph. The filament or discharge arc is seasoned before measurement of either. Measurement is made with the direct current test voltage regulated within one quarter of one percent. The test voltage is 12.8v. The measurement of luminous flux is made in accordance with the Illuminating Engineering Society of North America, LM–45, IES *Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980); is made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5, and on any other replaceable light source so designed; and is made with the electrical conductor and light source base shrouded with an opaque white cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the Types HB3 and HB4 is made with the base covered with a white cover as shown in the drawings for Types HB3

and HB4 filed in Docket No. NHTSA 98–3397. (The white cover is used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low).

S15.3 *Power and flux measurement.* The measurement of maximum power and luminous flux that is submitted in compliance with section VII of Appendix A of part 564 of this chapter, or section IV of Appendix B of part 564 of this chapter, is made with the direct current test voltage regulated within one quarter of one percent. The test voltage is 12.8v. The measurement of luminous flux is made in accordance with the Illuminating Engineering Society of North America, LM 45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980). The filament of a replaceable light source is seasoned before such measurement. The white covers are used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low.

S15.3.1 For a light source with a resistive element type filament, seasoning of the light source is made in accordance with this standard. The measurement of luminous flux is made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5 light sources, and on any other replaceable light source so designed, and must be made with the electrical conductor and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for Type HB3 and Type HB4 must be made with the base covered with the white cover shown in the drawings for Types HB3 and HB4 filed in Docket No. NHTSA 98–3397.

S15.3.2 For a light source using excited gas mixtures as a filament or discharge arc, seasoning of the light source system, including any ballast required for its operation, is made in accordance with section 4.0 of SAE Recommended Practice J2009 FEB93, *Discharge Forward Lighting Systems.* With the test voltage applied to the ballast input terminals, the measurement of luminous flux is made with the black cap installed, if so designed, and is made with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing.

S15.4 *Ballast markings.* If a ballast is required for operation, each ballast must bear the following permanent markings:

(a) Name or logo of ballast manufacturer;

(b) Ballast part number or unique identification;

(c) Part number or other unique identification of the light source for which the ballast is designed;

(d) Rated laboratory life of the light source/ballast combination, if the information for the light source has been filed in Appendix B of part 564 of this chapter;

(e) A warning that ballast output voltage presents the potential for severe electrical shock that could lead to permanent injury or death;

(f) Ballast output power in watts and output voltage in rms volts AC or DC; and

(g) The symbol 'DOT'.''

S15.5 *Gas discharge laboratory life.* For light sources that use excited gas mixtures as a filament or discharge arc, the '' rated laboratory life'' is determined in accordance with sections 4.3 and 4.9 of SAE Recommended Practice J2009 FEB93, *Forward Discharge Lighting Systems.*

S15.6 *Physical tests.* Each replaceable light source must comply with the performance requirements associated with the deflection test and pressure test of Table XXIII.

S16 *Headlamp concealment device requirements.*

S16.1 While the headlamp is illuminated, its fully opened headlamp concealment device must remain fully opened should any loss of power to or within the headlamp concealment device occur.

S16.2 Whenever any malfunction occurs in a component that controls or conducts power for the actuation of the concealment device, each closed headlamp concealment device must be capable of being fully opened by a means not requiring the use of any tools. Thereafter, the headlamp concealment device must remain fully opened until intentionally closed.

S16.3 Except for malfunctions covered by S16.2, each headlamp concealment device must be capable of being fully opened and the headlamps illuminated by actuation of a single switch, lever, or similar mechanism, including a mechanism that is automatically actuated by a change in ambient light conditions.

S16.4 Each headlamp concealment device must be installed so that the headlamp may be mounted, aimed, and adjusted without removing any component of the device, other than components of the headlamp assembly.

S16.5 Except for cases of malfunction covered by S16.2, each headlamp concealment device must, within an ambient temperature range of $-20°$ F to $+120°$ F, be capable of being fully opened in not more than 3 seconds after the actuation of a driver-operated control.

S16.6 As an alternative to complying with the requirements of S16.1 through S16.5, a vehicle with headlamps incorporating VHAD or visual/optical aiming in accordance with this standard may meet the requirements for *Concealable lamps* in paragraph 5.14 of the following version of the Economic Commission for Europe Regulation 48 ''Uniform Provisions Concerning the Approval of Vehicles With Regard to the Installation of Lighting and Light-Signalling Devices'': E/ECE/324–E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 (page 17), in the English language version. A copy of paragraph 5.14 may be reviewed at the DOT Docket Management Facility, U.S. Department of Transportation, Room PL–01, 400 Seventh Street, SW., Washington, DC 20590–0001. Copies of E/ECE/324–E/ECE/TRANS/505, Rev.1/Add.47/Rev.1/Corr.2, 26 February 1996 may be obtained from the ECE Internet site: *http://www.unece.org/trans/main/wp29/wp29regs.html* or by writing to: United Nations, Conference Services Division, Distribution and Sales Section, Office C.115–1, Palais des Nations, CH–1211, Geneva 10, Switzerland.

S16.7 *Certification election.* Manufacturers of vehicles with headlamps incorporating VHAD or visual/optical aiming must elect to certify to S16.1 through S16.5 or to S16.6 prior to, or at the time of certification of the vehicle, pursuant to 49 CFR part 567. The selection is irrevocable.

S17 *Headlamp marking requirements.*

S17.1 *Trademark.* The lens of each original and replacement equipment headlamp, and of each original and replacement equipment beam contributor must be marked with the name and/or trademark registered with the U.S. Patent and Trademark Office of the manufacturer of such headlamp or beam contributor, of its importer, or any manufacturer of a vehicle equipped with such headlamp or beam contributor. Nothing in this standard authorizes the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

S17.2 *Voltage and trade number.* Each original and replacement equipment headlamp, and each original and replacement equipment beam contributor must be marked with its

voltage and with its part or trade number.

S17.3 *Sealed beam headlamp markings.* Each sealed beam headlamp lens must be molded with ''SEALED BEAM'' and the appropriate designation code as shown in Table II in characters no less than 6.35 mm in size. The face of any character molded on the surface of the lens must not be raised more than 0.5 mm above the lens surface. Type 1C1, 2C1, and 2D1 headlamps must have no raised markings on the outside surface of the lens between the diameters of 40 mm and 90 mm about the lens center. Type 1A1, 2A1, 2B1, and 2E1 headlamps must have no raised markings on the outside surface of the lens within a diameter of 70 mm about the lens center. Type LF, UF, 1G1, 2G1, and 2H1 headlamps must have no raised markings on the outside surface of the lens within a diameter of 35 mm about the lens center. A Type 1C1 headlamp may be marked ''1'' rather than ''1C1''. A Type 2C1 headlamp may be marked ''2'' rather than ''2C1''. A Type 2D1 headlamp may be marked ''TOP'' or ''2'' rather than ''2D1''.

S17.4 *Replaceable bulb headlamp markings.* The lens of each replaceable bulb headlamp must bear permanent marking in front of each replaceable light source with which it is equipped that states either: The HB Type (if the light source conforms to S15 of this standard for filament light sources); or the bulb marking/designation provided in compliance with Section VIII of Appendix A of part 564 (if the light source conforms to S15 of this standard for discharge light sources).

S17.5 *Additional headlamp markings.* Additional marking requirements for headlamps are found in S6.5, S10.4, S11.5, S13.4, S14.6, S14.8, and S14.10 of this standard.

S18 *Replaceable headlamp lens requirements.* A replacement lens for a replaceable bulb headlamp or integral beam headlamp that is not required to have a bonded lens must be provided with a replacement seal in a package that includes instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly. Each replacement headlamp lens, when installed according to the lens manufacturer's instructions on an integral beam or replaceable bulb headlamp, must not cause the headlamp to fail to comply with any of the requirements of this standard. Each replacement headlamp lens must be marked with the symbol ''DOT'' either horizontally or vertically, to constitute certification. Each replacement headlamp lens must also be marked with manufacturer and the part or trade number of the headlamp for which it is intended, and with the name and/or trademark of the lens manufacturer or importer that is registered with the U.S. Patent and Trademark Office. Nothing in this standard authorizes the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

BILLING CODE 4910–59–P

TABLE I: REQUIRED LAMPS AND REFLECTIVE DEVICES

ALL PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS AND BUSES

LIGHTING DEVICE	NUMBER AND COLOR	MOUNTING LOCATION	MOUNTING HEIGHT	DEVICE ACTIVATION
Lower Beam Headlamps	White, of a Type and number listed in Table II	On the front, at the same height, symmetrically about the vertical centerline, as far apart as practicable, equal to or wider than the upper beam headlamps.	Not less than 55.9 cm. nor more than 137.2 cm.	The wiring harness or connector assembly of each headlighting system must be designed so that only those light sources intended for meeting lower beam photometrics are energized when the beam selector switch is in the lower beam position, and that only those light sources intended for meeting upper beam photometrics are energized when the beam selector switch is in the upper beam position, except for certain systems listed in Table II. May be flashed for signaling purposes.
Upper Beam Headlamps	White, of a Type and number listed in Table II	On the front, at the same height, symmetrically about the vertical centerline, as far apart as practicable, equal to or narrower than the lower beam headlamps.	Not less than 55.9 cm. nor more than 137.2 cm.	
Turn Signal Lamps	2 Amber	At or near the front, at the same height, symmetrically about the vertical centerline, as far apart as practicable.	Not less than 15 inches, nor more than 83 inches.	Flashing at 60 to 120 flashes per minute when actuated by the turn signal operating unit.
	2 Amber or red Truck tractor exception, see S6.1.1.3.	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable.		
Taillamps	2 Red	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable.	Not less than 15 inches, nor more than 72 inches.	Steady burning. Must be activated when the headlamps are activated in a steady burning state or the parking lamps are activated. May be activated when the headlamps are activated at less than full intensity as Daytime Running Lamps (DRL).
Stop Lamps	2 Red	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable.	Not less than 15 inches, nor more than 72 inches.	Steady burning. Must be activated upon application of the service brakes. If not optically combined with a turn signal lamp, must remain activated when the turn signal lamp is flashing. May also be activated by a device designed to retard the motion of the vehicle
Side Marker Lamps	2 Amber	On each side as far to the front as practicable.	Not less than 15 inches.	Steady burning except may be flashed for signaling purposes. Must be activated when the headlamps are activated in a steady burning state or the parking lamps are activated (not a requirement for vehicles 2032 mm. or more in overall width).
	2 Red (not required on truck tractor).	On each side as far to the rear as practicable.		

TABLE I: REQUIRED LAMPS AND REFLECTIVE DEVICES				
All PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS AND BUSES				
LIGHTING DEVICE	**NUMBER AND COLOR**	**MOUNTING LOCATION**	**MOUNTING HEIGHT**	**DEVICE ACTIVATION**
Reflex Reflectors	2 Amber	On each side as far to the front as practicable.	Not less than 15 inches, nor more than 60 inches.	Not applicable
	2 Red	On each side as far to the rear as practicable.		
	2 Red	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable. On a truck tractor may be mounted on the back of the cab not less than 4 inches above the height of the rear tires.		
Backup Lamp	1 White Additional lamps allowed to meet requirements.	On the rear.	No requirement.	Steady burning. Must be activated when the ignition switch is energized and reverse gear is engaged. Must not be energized when the vehicle is in forward motion.
License Plate Lamp	1 White Additional lamps allowed to meet requirements.	On the rear to illuminate license plate from top or sides.	No requirement.	Steady burning. Must be activated when the headlamps are activated in a steady burning state or when the parking lamps are activated (not a requirement for vehicles 2032 mm. or more in overall width).
ADDITIONAL LAMPS REQUIRED ON ALL PASSENGER CARS, AND MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, AND BUSES LESS THAN 2032 MM. IN OVERALLWIDTH				
Parking lamps	2 Amber or white	On the front, at the same height, symmetrically about the vertical centerline, as far apart as practicable.	Not less than 15 inches, nor more than 72 inches.	Steady burning. Must be activated when the headlamps are activated in a steady burning state.
ADDITIONAL LAMP(S) REQUIRED ON ALL PASSENGER CARS, AND MULTIPURPOSE PASSENGER VEHICLES, TRUCKS AND BUSES LESS THAN 2032 MM. IN OVERALL WIDTH AND WITH A GVWR OF 10,000 LBS OR LESS				
High mounted stop lamp	1 Red, or 2 red where exceptions apply See Section 6.1.1.2.	On the rear including glazing, with the lamp center on the vertical centerline as viewed from the rear.	Not less than 34 inches except for passenger cars. See Section 6.1.3.2.	Steady burning. Must only be activated upon application of the service brakes.

TABLE I: REQUIRED LAMPS AND REFLECTIVE DEVICES				
ADDITIONAL LAMPS AND REFLECTIVE DEVICES REQUIRED ON ALL PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS AND BUSES 30 FEET OR LONGER				
LIGHTING DEVICE	**NUMBER AND COLOR**	**MOUNTING LOCATION**	**MOUNTING HEIGHT**	**DEVICE ACTIVATION**
Intermediate side marker lamps	2 Amber	On each side located at or near the midpoint between the front and rear side marker lamps.	Not less than 15 inches.	Steady burning except may be flashed for signaling purposes. Must be activated when the headlamps are activated in a steady burning state or the parking lamps are activated (not a requirement for vehicles 2032 mm. or more in overall width).
Intermediate side reflex reflectors	2 Amber	On each side located at or near the midpoint between the front and rear side reflex reflectors.	Not less than 15 inches, nor more than 60 inches.	Not applicable
ADDITIONAL LAMPS REQUIRED ON ALL MULTIPURPOSE PASSENGER VEHICLES, TRUCKS AND BUSES 2032 MM. OR MORE IN OVERALL WIDTH				
Clearance lamps	2 Amber	On the front to indicate the overall width of the vehicle, or width of cab on truck tractor, at the same height, symmetrically about the vertical centerline. May be located at a location other than the front if necessary to indicate the overall width of the vehicle, or for protection from damage during normal operation of the vehicle.	As near the top as practicable.	Steady burning.
	2 Red (not required on truck tractor).	On the rear to indicate the overall width of the vehicle, at the same height, symmetrically about the vertical centerline. May be located at a location other than the rear if necessary to indicate the overall width of the vehicle, or for protection from damage during normal operation of the vehicle.	As near the top as practicable, except where the rear identification lamps are mounted at the extreme height of the vehicle.	Steady burning.
Identification lamps	3 Amber	On the front, at the same height, as close as practicable to the vertical centerline, with lamp centers equally spaced not less than 6 inches or more than 12 inches apart.	As near the top of the vehicle or top of the cab as practicable.	Steady burning.
	3 Red (not required on truck tractor).	On the rear, at the same height, as close as practicable to the vertical centerline, with lamp centers equally spaced not less than 6 inches or more than 12 inches apart.	As near the top as practicable.	Steady burning.

TABLE I: REQUIRED LAMPS AND REFLECTIVE DEVICES				
ADDITIONAL LAMPS REQUIRED ON ALL SCHOOL BUSES EXCEPT MULTIFUNCTION SCHOOL ACTIVITY BUSES				
LIGHTING DEVICE	**NUMBER AND COLOR**	**MOUNTING LOCATION**	**MOUNTING HEIGHT**	**DEVICE ACTIVATION**
Signal warning lamps	2 Red required, 2 amber optional	On the front of the cab as far apart as practicable, but in no case closer than less than 40 inches apart. Amber lamps, where installed, at the same height as and just inboard of the red lamp.	As high as practicable but at least above the windshield.	Flashing alternately between 60 to 120 cycles per minute, with an activation period sufficient to allow the lamp to reach full brightness, when actuated by a manual switch. Amber lamps, where installed, may only be activated by manual or foot operation, and must be automatically deactivated and the red lamps must be automatically activated when the bus entrance door is opened.
	2 Red required, 2 amber optional	On the rear cab as far apart as practicable, but in no case closer than less than 40 inches apart. Amber lamps, where installed, at the same height as and just inboard of the red lamp.	As high as practicable but at least above the top of any side window opening.	Flashing alternately between 60 to 120 cycles per minute, with an activation period sufficient to allow the lamp to reach full brightness, when actuated by a manual switch. Amber lamps, where installed, may only be activated by manual or foot operation, and must be automatically deactivated and the red lamps must be automatically activated when the bus entrance door is opened.
ADDITIONAL LAMPS ALLOWED BUT NOT REQUIRED ON PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS AND BUSES				
Daytime running lamp (DRL)	2 identically colored either white, white to yellow, white to selective yellow, selective yellow, or yellow	On the front, symmetrically disposed about the vertical centerline if not a pair of lamps required by this standard or if not optically combined with a pair of lamps required by this standard.	Not more than 1.067 meters above the road surface if not a pair of lamps required by this standard or if not optically combined with a pair of lamps required by this standard.	Steady burning. Automatically activated as determined by the vehicle manufacturer and automatically deactivated when the headlamp control is in any "on" position. See S7.11.2 for additional activation requirements when mounted close to, or combined with, a turn signal lamp.
ALL TRAILERS				
Turn Signal Lamps	2 Red or amber	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable.	Not less than 15 inches, nor more than 83 inches.	Flashing at 60 to 120 flashes per minute, actuated by the turn signal operating unit.
Taillamps	2 Red or 1 red on trailers less than 760 mm wide.	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable. A single lamp must be mounted at or near the vertical centerline.	Not less than 15 inches, nor more than 72 inches.	Steady burning.

TABLE I: REQUIRED LAMPS AND REFLECTIVE DEVICES

ALL TRAILERS

LIGHTING DEVICE	NUMBER AND COLOR	MOUNTING LOCATION	MOUNTING HEIGHT	DEVICE ACTIVATION
Stop Lamps	2 Red, or 1 red on trailers less than 760 mm wide.	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable. A single lamp must be mounted at or near the vertical centerline.	Not less than 15 inches, nor more than 72 inches.	Steady burning. Must be activated upon application of the service brakes. If not optically combined with a turn signal lamp, must remain activated when the turn signal lamp is flashing. May also be activated by a device designed to retard the motion of the vehicle
Side Marker Lamps	2 Amber. None required on trailers less than 1829 mm [6 ft] in overall length including the trailer tongue.	On each side as far to the front as practicable exclusive of the trailer tongue.	Not less than 15 inches.	Steady burning except may be flashed for signaling purposes.
	2 Red	On each side as far to the rear as practicable.		
Reflex Reflectors	2 Amber. None required on trailers less than 1829 mm [6 ft] in overall length including the trailer tongue.	On each side as far to the front as practicable exclusive of the trailer tongue.	Not less than 15 inches, nor more than 60 inches.	Not applicable
	2 Red	On each side as far to the rear as practicable.		
	2 Red or 1 red on trailers less than 760 mm wide.	On the rear, at the same height, symmetrically about the vertical centerline, as far apart as practicable. A single reflector must be mounted at or near the vertical centerline.		
License Plate Lamp	1 White. Additional lamps allowed to meet requirements.	On the rear to illuminate license plate from top or sides.	No requirement.	Steady burning.

TABLE I: REQUIRED LAMPS AND REFLECTIVE DEVICES				
ADDITIONAL LAMPS REQUIRED ON ALL TRAILERS 2032 MM. OR MORE IN OVERALL WIDTH				
LIGHTING DEVICE	**NUMBER AND COLOR**	**MOUNTING LOCATION**	**MOUNTING HEIGHT**	**DEVICE ACTIVATION**
Clearance lamps	2 Amber	On the front to indicate the overall width of the vehicle, at the same height, symmetrically about the vertical centerline, as far apart as practicable.	No requirement.	Steady burning.
	2 Red	On the rear to indicate the overall width of the vehicle, at the same height, symmetrically about the vertical centerline, as far apart as practicable.	No requirement.	Steady burning.
	2 Amber to front and 2 Red to rear	On a boat trailer the requirement for front and rear clearance lamps may be met by installation at or near the midpoint on each side of a dual facing lamp so as to indicate the extreme width.	No requirement	Steady burning.
Identification lamps	3 Red	On the rear, at the same height, as close as practicable to the top of the vehicle, as close as practicable to the vertical centerline, with lamp centers equally spaced not less than 6 inches or more than 12 inches apart.	No Requirement	Steady burning
ADDITIONAL LAMPS AND REFLECTIVE DEVICES REQUIRED ON ALL TRAILERS 30 FEET OR LONGER				
Intermediate side marker lamps	2 Amber	On each side located at or near the midpoint between the front and rear side marker lamps.	Not less than 15 inches.	Steady burning except may be flashed for signaling purposes.
Intermediate side reflex reflectors	2 Amber	On each side located at or near the midpoint between the front and rear side reflex reflectors.	Not less than 15 inches, nor more than 60 inches.	Not applicable
ALL MOTORCYCLES				
Lower Beam Headlamps	White, of a type and number listed in S13	On the front, at the same height, symmetrically about the vertical centerline, as far apart as practicable, equal to or wider than the upper beam headlamps.	Not less than 55.9 cm. nor more than 137.2 cm.	The wiring harness or connector assembly of each headlighting system must be designed so that only those light sources intended for meeting lower beam photometrics are energized when the beam selector switch is in the lower beam position, and that only those light sources intended for meeting upper beam photometrics are energized when the beam selector switch is in the upper beam position, except for certain systems listed in Table II. May be flashed for signaling purposes. The upper beam or the lower beam, but not both, may be wired to modulate from a higher intensity to a lower intensity in accordance with S13.5
Upper Beam Headlamps	White, of a type and number listed in S13	On the front, at the same height, symmetrically about the vertical centerline, as far apart as practicable, equal to or narrower than the lower beam headlamps.	Not less than 55.9 cm. nor more than 137.2 cm.	

TABLE I: REQUIRED LAMPS AND REFLECTIVE DEVICES

ALL MOTORCYCLES

LIGHTING DEVICE	NUMBER AND COLOR	MOUNTING LOCATION	MOUNTING HEIGHT	DEVICE ACTIVATION
Turn Signal Lamps	2 Amber. None required on a motor driven cycle whose speed attainable in 1 mile is 30 mph or less.	At or near the front, at the same height, symmetrically about the vertical centerline, and having a minimum horizontal separation distance (centerline of lamps) of 16 inches. Minimum edge-to-edge separation distance between lamp and headlamp is 4 inches.	Not less than 15 inches, nor more than 83 inches.	Flashing at 60 to 120 flashes per minute, actuated by the turn signal operating unit.
	2 Amber or red. None required on a motor driven cycle whose speed attainable in 1 mile is 30 mph or less.	At or near the rear, at the same height, symmetrically about the vertical centerline, and having a minimum horizontal separation distance (centerline to centerline of lamps) of 9 inches. Minimum edge-to-edge separation distance between lamp and tail or stop lamp is 4 inches, when a single stop and taillamp is installed on the vertical centerline and the turn signal lamps are red.		
Taillamps	1 Red	On the rear, on the vertical centerline except that if two are used, they must be symmetrically disposed about the vertical centerline.	Not less than 15 inches, nor more than 72 inches.	Steady burning. Must be activated when the headlamps are activated in a steady burning state.
Stop Lamps	1 Red	On the rear, on the vertical centerline except that if two are used, they must be symmetrically disposed about the vertical centerline.	Not less than 15 inches, nor more than 72 inches.	Steady burning. Must be activated upon application of the service brakes. If not optically combined with a turn signal lamp, must remain activated when the turn signal lamp is flashing. May also be activated by a device designed to retard the motion of the vehicle
Reflex Reflectors	2 Amber	On each side as far to the front as practicable.	Not less than 15 inches, nor more than 60 inches.	Not applicable
	2 Red	On each side as far to the rear as practicable.		
	1 Red	On the rear, on the vertical centerline except that, if two are used on the rear, they must be symmetrically disposed about the vertical centerline.		
License Plate Lamp	1 White. Additional lamps allowed to meet requirements.	On the rear to illuminate license plate.	No requirement.	Steady burning. Must be activated when the headlamps are activated in a steady burning state.

TABLE II-a. HEADLIGHTING SYSTEMS-SEALED BEAMS

SYSTEM DESIGNATION	UNIT NOMINAL SIZE	NUMBER OF HEADLAMPS	HEADLAMP DESIGNATION	BEAM COMPOSITION	PHOTOMETRY REQUIREMENTS REFERENCE			MAXIMUM FILAMENT POWER AT 12.8 V.	
					TABLE XVIII	TABLE XIX			
					UPPER BEAM MECHANICAL AND VISUAL AIM	LOWER BEAM MECH AIM	LOWER BEAM VISUAL AIM	UPPER BEAM	LOWER BEAM
TYPE A	100x165 mm	2	1A1	1 UB FILAMENT	UB4	N.A.	N.A.	55	N.A.
		2	2A1	1 UB & 1 LB FILAMENTS	UB5	LB4M	LB2V	43	65
TYPE B	142x200 mm	2	2B1	1 UB & 1 LB FILAMENTS	UB3	LB3M	LB3V	70	60
TYPE C	146 mm DIA.	2	1C1	1 UB FILAMENT	UB4	N.A.	N.A.	55	N.A.
		2	2C1	1 UB & 1 LB FILAMENTS	UB5	LB4M	LB2V	43	65
TYPE D	178 mm DIA.	2	2D1	1 UB & 1 LB FILAMENTS	UB3	LB3M	LB3V	65	55
TYPE E	100X165 mm	2	2E1	1 UB & 1 LB FILAMENTS	UB3	LB3M	LB3V	70	60
TYPE F[2]	92x150 mm	2	UF	1 UB FILAMENT	UB1	N.A.	N.A.	70	N.A.
		2	LF	1 LB FILAMENT	N.A[1]	LB1M[1]	LB1[1]	N.A.	60
TYPE G		2	1G1	1 UB FILAMENT	UB4	N.A.	N.A.	55	N.A.
		2	2G1	1 UB & 1 LB FILAMENTS	UB5	LB4M	LB2V	43	65
TYPE H		2	2H1	1 UB & 1 LB FILAMENTS	UB3	LB3M	LB3V	70	60

[1] Headlamps marked "LF" may remain activated when headlamps marked "UF" are activated.

[2] Type F headlamps may be mounted on common or parallel seating and aiming planes to permit simultaneous aiming with restrictions. See S10.3.

TABLE II-b. HEADLIGHTING SYSTEMS-COMBINATION

SYSTEM DESIGNATION	SYSTEM COMPOSITION	PHOTOMETRY REQUIREMENTS REFERENCE		
		TABLE XVIII	TABLE XIX	
		UPPER BEAM MECHANICAL AND VISUAL AIM	LOWER BEAM MECH AIM	LOWER BEAM VISUAL AIM
2 LAMP SYSTEM	A COMBINATION OF TWO DIFFERENT HEADLAMPS CHOSEN FROM ; TYPE F, AN INTEGRAL BEAM HEADLAMP, OR A REPLACEABLE BULB HEADLAMP.	UB2[3]	LB2M[3]	LB2V[3]
4 LAMP SYSTEM	ANY COMBINATION OF FOUR DIFFERENT HEADLAMPS (2 PAIRS) CHOSEN FROM ; TYPE F, AN INTEGRAL BEAM HEADLAMP, OR A REPLACEABLE BULB HEADLAMP.	UB1	LB1M[4]	LBV[4]

[3] Headlamps designed to conform to the photometry requirements of UB2 and LB2M or LB2V may allow the lower beam light source(s) to remain activated when an upper beam light source is activated if the lower beam light source(s) contribute to upper beam photometric compliance.

[4] Lower beams may remain activated when upper beams are activated.

TABLE II-c. HEADLIGHTING SYSTEMS-INTEGRAL BEAMS

SYSTEM DESIGNATION	BEAM COMPOSITION	PHOTOMETRY REQUIREMENTS REFERENCE		
		TABLE XVIII	TABLE XIX	
		UPPER BEAM MECHANICAL AND VISUAL AIM	LOWER BEAM MECH AIM	LOWER BEAM VISUAL AIM
2 LAMP SYSTEM	UPPER BEAM & LOWER BEAM	UB2[3] OR UB3	LB2M[3] OR LB3M	LB2V[3] OR LB3V
4 LAMP SYSTEM	UPPER BEAM	UB4	N.A.	N.A.
	UPPER BEAM & LOWER BEAM	UB5	LB4M	LB2V
4 LAMP SYSTEM	UPPER BEAM (U)	UB1	N.A.	N.A.
	LOWER BEAM (L)	N.A.[4]	LB1M[4]	LB1V[4]
4 LAMP SYSTEM	UPPER BEAM	UB6	N.A.	N.A.
	LOWER BEAM	N.A.[5]	LB5M[5]	LB4V[5]
BEAM CONTRIBUTOR	UPPER BEAM & LOWER BEAM	UB1[6]	LB1M[4][6]	LB1V[4][6]

[3] Headlamps designed to conform to the photometry requirements of UB2 and LB2M or LB2V may allow the lower beam light source(s) to remain activated when an upper beam light source is activated if the lower beam light source(s) contribute to upper beam photometric compliance.
[4] Lower beams may remain activated when upper beams are activated.
[5] Lower beams must remain activated when upper beams are activated.
[6] Beam contributor photometric allocation formula applies. See S6.8.5.6.6.

TABLE II-d. HEADLIGHTING SYSTEMS-REPLACEABLE BULB

SYSTEM DESIGNATION	LIGHT SOURCE COMPOSITION	PHOTOMETRY REQUIREMENTS REFERENCE		
		TABLE XVIII	TABLE XIX	
		UPPER BEAM MECHANICAL AND VISUAL AIM	LOWER BEAM MECH AIM	LOWER BEAM VISUAL AIM
2 LAMP SYSTEM	ANY DUAL FILAMENT TYPE, OTHER THAN HB2, USED ALONE OR WITH ANOTHER DUAL FILAMENT TYPE OTHER THAN HB2.	UB2[3] OR UB3	LB2M[3] OR LB3M	LB2V[3] OR LB3V
2 LAMP SYSTEM	HB2 OR ANY SINGLE FILAMENT TYPE USED ALONE OR WITH ANY OTHER SINGLE OR DUAL FILAMENT TYPE.	UB2[3]	LB2M[3]	LB2V[3]
4 LAMP SYSTEM	ANY DUAL FILAMENT TYPE, OTHER THAN HB2, USED ALONE OR WITH ANOTHER DUAL FILAMENT TYPE OTHER THAN HB2.	UB1 OR UB3	LB1M OR LB3M	LB1V OR LB3V
4 LAMP SYSTEM	HB2 OR ANY SINGLE FILAMENT TYPE USED ALONE OR WITH ANY OTHER SINGLE OR DUAL FILAMENT TYPE. (U & L)	UB1	LB1M	LB1V

[3] Headlamps designed to conform to the photometry requirements of UB2 and LB2M or LB2V may allow the lower beam light source(s) to remain activated when an upper beam light source is activated if the lower beam light source(s) contribute to upper beam photometric compliance.

TABLE III: CONSPICUITY SYSTEMS REQUIREMENTS			
		Retroreflective Sheeting	Conspicuity Reflex Reflectors
Application pattern.	Alternating red and white material	As shown in Figure 12, where alternating material is required to be installed, except for a segment that is trimmed to clear obstructions, or lengthened to provide red sheeting near red lamps, alternating material must be installed with each white and red segment having a length of 300 ±150 mm. Neither white nor red sheeting must represent more than two thirds the aggregate of any continuous strip marking the width of a trailer, or any continuous or broken strip marking its length.	Where alternating color material is required to be installed, reflex reflectors must be installed in a repetitive pattern of two or three white reflectors alternating with two or three red reflectors, with the center of each reflector not more than 100 mm. from the center of each adjacent reflector.
	White material		Where white material is required to be installed, white reflex reflectors must be installed with the center of each reflector not more than 100 mm. from the center of each adjacent reflector.
Application location.		Not permitted (as illustrated in Figure 12) to be installed to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinges and lamp bodies on trailers and body joints, stiffening beads, drip rails, and rolled surfaces on truck tractors.	
Application spacing.		As illustrated in Figure 12, the edge of any white sheeting must not be located closer than 75 mm. to the edge of the luminous lens area of any red or amber lamp that is required by this standard. The edge of any red sheeting must not be located closer than 75 mm. to the edge of the luminous lens area of any amber lamp that is required by this standard.	

TABLE III: CONSPICUITY SYSTEMS REQUIREMENTS			
Vehicle	Element	Element color	Requirement
Trailer rear	Element 1	Alternating	As shown in Figure 11, a strip of sheeting or reflectors, as horizontal as practicable, across the full width of the trailer, as close to the extreme edges as practicable, and as close as practicable to not less than 375 mm. and not more than 1525 mm. above the road surface at the stripe centerline with the trailer at curb weight.
	Element 2 (Not required for container chassis or for platform trailers without bulkheads).	White	As shown in Figure 11, two pairs of strips of sheeting or reflectors, each pair consisting of strips 300 mm. long, applied horizontally and vertically to the right and left upper contours of the body, as viewed from the rear, as close to the top of the trailer and as far apart as practicable. If the perimeter of the body, as viewed from the rear, is other than rectangular, the strips may be applied along the perimeter, as close as practicable to the uppermost and outermost areas of the rear of the body on the left and right sides.
	Element 3 (Not required for trailers without underride protection devices).	Alternating	As shown in Figure11, a strip of Grade DOT-C2 sheeting no less than 38 mm. wide or reflectors applied across the full width of the horizontal member of the rear underride protection device.
Trailer side	Side	Alternating	As shown in Figure 11, a strip of sheeting or reflectors applied to each side, as horizontal as practicable, originating and terminating as close to the front and rear as practicable, as close as practicable to not less than 375 mm. and not more than 1525 mm. above the road surface at the stripe centerline at curb weight, except that at the location chosen the strip must not be obscured in whole or in part by other motor vehicle equipment or trailer cargo. The strip need not be continuous as long as not less than half the length of the trailer is covered and the spaces are distributed as evenly as practicable. If necessary to clear rivet heads or other similar obstructions, Grade DOT-C2 sheeting may be separated into two 25 mm. wide strips of the same length and color, separated by a space of not more than 25 mm. and used in place of the retroreflective sheeting that would otherwise be applied.

TABLE III: CONSPICUITY SYSTEMS REQUIREMENTS			
Vehicle	Element	Element color	Requirement
Truck tractor	Element 1	Alternating	As shown in Figure 13, two strips of sheeting or reflectors, each not less than 600mm. long, located as close as practicable to the edges of the rear fenders, mudflaps, or the mudflap support brackets, to mark the width of the truck tractor. The strips must be mounted as horizontal as practicable, in a vertical plane facing the rear, on the rear fenders, on the mudflap support brackets, or on the mudflaps. Strips on mudflaps must be mounted not lower than 300 mm. below the upper horizontal edge of the mudflap. If the vehicle is certified with temporary mudflap support brackets, the strips must be mounted on the mudflaps or on plates transferable to permanent mudflap support brackets. For a truck tractor without mudflaps, the strips may be mounted outboard of the frame on brackets behind the rear axle or on brackets ahead of the rear axle and above the top of the rear tires at unladen vehicle height, or they may be mounted directly or indirectly to the back of the cab as close to the outer edges as practicable, above the top of the tires, and not more than 1525 mm. above the road surface at unladen vehicle height. If the strips are mounted on the back of the cab, no more than 25% of their cumulative area may be obscured by vehicle equipment as determined in a rear orthogonal view.
	Element 2	White	As shown in Figure 13, two pairs of strips of sheeting or reflectors, each pair consisting of strips 300 mm. long, applied horizontally and vertically as practicable to the right and left upper contours of the cab, as close to the top of the cab and as far apart as practicable. No more than 25% of their cumulative area may be obscured by vehicle equipment as determined in a rear orthogonal view. If one pair must be relocated to avoid obscuration by vehicle equipment, the other pair may be relocated in order to be mounted symmetrically. If the rear window is so large as to occupy all the practicable space, the material may be attached to the edge of the window itself.

TABLE IV. EFFECTIVE PROJECTED LUMINOUS LENS AREA REQUIREMENTS				
LIGHTING DEVICE	**PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES OF LESS THAN 2032 MM. IN OVERALL WIDTH** MINIMUM EFFECTIVE PROJECTED LUMINOUS LENS AREA (sq. mm.)		**MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES 2032 MM. OR MORE IN OVERALL WIDTH** MINIMUM EFFECTIVE PROJECTED LUMINOUS LENS AREA EACH LAMP (sq. mm.)	**MOTORCYCLES** MINIMUM EFFECTIVE PROJECTED LUMINOUS LENS AREA (sq. mm.)
	EACH COMPARTMENT	**TOTAL DEVICE**		
Front turn signal lamp	2200	2200	7500	2258
Rear turn signal lamp	2200	5000	7500	2258
Stop lamp	2200	5000	7500	5000[1]

[1] A motor driven cycle whose speed attainable in 1 mile is 30 mph or less may be equipped with a stop lamp whose minimum effective projected luminous lens area of not less than 2258 sq. mm.

TABLE IV. EFFECTIVE PROJECTED LUMINOUS LENS AREA REQUIREMENTS		
LIGHTING DEVICE	**PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, AND BUSES OF LESS THAN 2032 MM. IN OVERALL WIDTH AND WITH A GVWR OF 10,000 LBS OR LESS USING A SINGLE LAMP** MINIMUM EFFECTIVE PROJECTED LUMINOUS LENS AREA (sq. mm.)	**MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, AND BUSES OF LESS THAN 2032 MM. IN OVERALL WIDTH AND WITH A GVWR OF 10,000 LBS OR LESS USING DUAL LAMPS OF IDENTICAL SIZE AND SHAPE** MINIMUM EFFECTIVE PROJECTED LUMINOUS LENS AREA EACH LAMP (sq. mm.)
High-mounted stop lamp	2903	1452

TABLE IV. EFFECTIVE PROJECTED LUMINOUS LENS AREA REQUIREMENTS	
LIGHTING DEVICE	**SCHOOL BUS** MINIMUM EFFECTIVE PROJECTED LUMINOUS LENS AREA EACH LAMP (sq. mm.)
School bus signal lamp	12,258

TABLE V. VISIBILITY REQUIREMENTS OF INSTALLED LIGHTING DEVICES		
LIGHTING DEVICE	**APPLICABLE VEHICLES**	**REQUIRED VISIBILITY**
Backup lamp	All, where installed.	Lamps must be mounted so that the optical center of at least one lamp is visible from any eye point elevation from at least 1828 mm. to 610 mm. above the horizontal plane on which the vehicle is standing; and from any position in the area, rearward of a vertical plane perpendicular to the longitudinal axis of the vehicle, 914 mm. to the rear of the vehicle and extending 914 mm. beyond each side of the vehicle.
High-mounted stop lamp	All, where installed.	Signal must be visible to the rear through a horizontal angle from 45° to the left to 45° to the right of the longitudinal axis of the vehicle. (Single lamp or combination of dual lamps)
School bus signal lamp	All school buses.	Signal of front lamps to the front and rear lamps to the rear must be unobstructed within area bounded by 5° up to 10° down and 30° left to 30° right.

TABLE V. VISIBILITY REQUIREMENTS OF INSTALLED LIGHTING DEVICES (EXISTING SAE VISIBILITY ALTERNATIVE)		
LIGHTING DEVICE	**APPLICABLE VEHICLES**	**REQUIRED VISIBILITY[1]**
Turn signal lamp	All passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, and trailers of less than 2032 mm. overall width.	Unobstructed minimum effective projected luminous lens area of 1250 sq. mm .through horizontal angle of H-V to H-45° OB.
	All multipurpose passenger vehicles, trucks, buses, and trailers of 2032 mm. or more overall width.	Unobstructed minimum effective projected luminous lens area of 1300 sq. mm. through horizontal angle of H-V to H-45° OB. Where more than one lamp or optical area is lighted on each side of the vehicle, only one such area on each side need comply.
Stop lamp	All, where installed.	Unobstructed minimum effective projected luminous lens area of 1250 sq. mm. through horizontal angle of H-45° IB to H-45° OB. Where more than one lamp or optical area is lighted on each side of the vehicle, only one such area on each side need comply.
Taillamp	All, where installed.	Unobstructed minimum effective projected luminous lens area of 1250 sq. mm. through horizontal angle of H-45° IB to H-45° OB. Where more than one lamp or optical area is lighted on each side of the vehicle, only one such area on each side need comply.

[1] IB indicates an inboard direction (toward the vehicle's longitudinal centerline) and OB indicates an outboard direction.

TABLE V. VISIBILITY REQUIREMENTS OF INSTALLED LIGHTING DEVICES - LENS AREA VISIBILITY OPTION				
LIGHTING DEVICE	**APPLICABLE VEHICLES**	**CORNER POINTS[1][2]**		**REQUIRED VISIBILITY**
Turn signal lamp[3]	All, where installed.	15° UP - 45° IB	15° UP - 45° OB	Unobstructed minimum effective projected luminous lens area of 1250 sq. mm. in any direction throughout the pattern defined by the specified corner points.
		15° DOWN - 45° IB	15° DOWN - 45° OB	
Stop lamp	All, where installed.	15° UP - 45° IB	15° UP - 45° OB	
		15° DOWN - 45° IB	15° DOWN - 45° OB	
Taillamp	All, where installed.	15° UP - 45° IB	15° UP - 45° OB	
		15° DOWN - 45° IB	15° DOWN - 45° OB	
Parking lamp	All, where installed.	15° UP - 45° IB	15° UP - 45° OB	
		15° DOWN - 45° IB	15° DOWN - 45° OB	

[1] IB indicates an inboard direction (toward the vehicle's longitudinal centerline) and OB indicates an outboard direction

[2] Where lamp is mounted less than 750 mm. above the road surface, as measured to the axis of reference, visibility requirements are reduced to 5° down.

[3] Where more than one lamp or optical area is lighted at the front on each side of a multipurpose passenger vehicle, truck, trailer, or bus, of 2032 mm. or more overall width, only one such area need comply.

TABLE V. VISIBILITY REQUIREMENTS OF INSTALLED LIGHTING DEVICES - LUMINOUS INTENSITY VISIBILITY OPTION				
LIGHTING DEVICE	**APPLICABLE VEHICLES**	**CORNER POINTS[1][2]**		**REQUIRED VISIBILITY** Minimum luminous intensity in any direction throughout the pattern defined by the specified corner points. Candela
Turn signal lamp	All, where installed.	15° UP - 45° IB	15° UP - 80° OB	0.3
		15° DOWN - 45° IB	15° DOWN - 80° OB	
Stop lamp	All, where installed.	15° UP - 45° IB	15° UP - 45° OB	0.3
		15° DOWN - 45° IB	15° DOWN - 45° OB	
Taillamp[4]	All, where installed.	15° UP - 45° IB	15° UP - 80° OB	0.05
		15° DOWN - 45° IB	15° DOWN - 80° OB	
Parking lamp	All, where installed.	15° UP - 45° IB	15° UP - 80° OB	0.05
		15° DOWN - 45° IB	15° DOWN - 80° OB	

[1] IB indicates an inboard direction (toward the vehicle's longitudinal centerline) and OB indicates an outboard direction.

[2] Where lamp is mounted less than 750 mm. above the road surface, as measured to the axis of reference, visibility requirements are reduced to 5° down.

[4] Inboard and outboard corner points are 80° for a single taillamp installed on a motorcycle.

TABLE VI: FRONT TURN SIGNAL LAMP PHOTOMETRY REQUIREMENTS

GROUP NUMBER	TEST POINT (degrees)		MINIMUM PHOTOMETRIC INTENSITY RATIO WHERE COMBINED WITH A PARKING LAMP OR CLEARANCE LAMP[4] N.R. – NO REQUIREMENT	BASE REQUIREMENTS						2.5X BASE REQUIREMENTS					
				MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd)			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)			MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd)			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)		
				Lighted Sections			Lighted Sections			Lighted Sections			Lighted Sections		
				1	2	3	1	2	3	1	2	3	1	2	3
1	20L	5U	3	25	30	35	130	155	180	62.5	75	87.5	325	387	450
		5D	N.R.	25	30	35				62.5	75	87.5			
	5L	10U	3	40	48	55				100	120	137.5			
		10D[3]	N.R.	40	48	55				100	120	137.5			
2	10L	5U	3	75	88	100	250	295	340	187.5	220	250	625	737	850
		H	3	100	120	140				250	300	350			
		5D	N.R.	75	88	100				187.5	220	250			
3	5U	V	5	175	205	235	950	1130	1295	437.5	512.5	587.5	2375	2825	3237
	H	5L	5	200	240	275				500	600	687.5			
		V	5	200	240	275				500	600	687.5			
		5R	5	200	240	275				500	600	687.5			
	5D	V	N.R.	175	205	235				437.5	512.5	587.5			
4	10R	5U	3	75	88	100	250	295	340	187.5	220	250	625	737	850
		H	3	100	120	140				250	300	350			
		5D	N.R.	75	88	100				187.5	220	250			
5	5R	10U	3	40	48	55	130	155	180	100	120	137.5	325	387	450
		10D[3]	N.R.	40	48	55				100	120	137.5			
	20R	5U	3	25	30	35				62.5	75	87.5			
		5D	N.R.	25	30	35				62.5	75	87.5			

[1] The measured values at each test point must not be less than 60% of the minimum value when considering overall group or zone photometry values.

[2] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[3] Where turn signal lamps are mounted with their axis of reference less than 750 mm. above the road surface photometry requirements below 5° down may be met at 5° down rather than at the required downward angle.

[4] Required only when a combined turn signal lamp and clearance lamp is installed on a vehicle 2032 mm. or more in overall width.

TABLE VI: FRONT TURN SIGNAL LAMP PHOTOMETRY REQUIREMENTS

GROUP NUMBER	TEST POINT (degrees)		MINIMUM PHOTOMETRIC INTENSITY RATIO WHERE COMBINED WITH A PARKING LAMP OR CLEARANCE LAMP[4] N.R. – NO REQUIREMENT	2 X BASE REQUIREMENTS						1.5X BASE REQUIREMENTS					
				MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd)			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)			MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd)			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)		
				Lighted Sections			Lighted Sections			Lighted Sections			Lighted Sections		
				1	2	3	1	2	3	1	2	3	1	2	3
1	20L	5U	3	50	60	70	260	310	360	37.5	45	52.5	195	232.5	270
		5D	N.R.	50	60	70				37.5	45	52.5			
	5L	10U	3	80	96	110				60	72	82.5			
		10D[3]	N.R.	80	96	110				60	72	82.5			
2	10L	5U	3	150	176	200	500	590	680	112.5	132	150	375	442.5	510
		H	3	200	240	280				150	180	210			
		5D	N.R.	150	176	200				112.5	132	150			
3	5U	V	5	350	410	470	1900	2260	2590	262.5	307.5	352.5	1425	1695	1942.5
	H	5L	5	400	480	550				300	360	412.5			
		V	5	400	480	550				300	360	412.5			
		5R	5	400	480	550				300	360	412.5			
	5D	V	N.R.	350	410	470				262.5	307.5	352.5			
4	10R	5U	3	150	176	200	500	590	680	112.5	132	150	375	442.5	510
		H	3	200	240	280				150	180	210			
		5D	N.R.	150	176	200				112.5	132	150			
5	5R	10U	3	80	96	110	260	310	360	60	72	82.5	195	232.5	270
		10D[3]	N.R.	80	96	110				60	72	82.5			
	20R	5U	3	50	60	70				37.5	45	52.5			
		5D	N.R.	50	60	70				37.5	45	52.5			

[1] The measured values at each test point must not be less than 60% of the minimum value when considering overall group or zone photometry values.

[2] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[3] Where turn signal lamps are mounted with their axis of reference less than 750 mm. above the road surface photometry requirements below 5° down may be met at 5° down rather than at the specified required downward angle.

[4] Required only when a combined turn signal lamp and clearance lamp is installed on a vehicle 2032 mm. or more in overall width.

TABLE VII: REAR TURN SIGNAL LAMP PHOTOMETRY REQUIREMENTS[5]

GROUP NUMBER	TEST POINT[6] (degrees)		MINIMUM PHOTOMETRIC INTENSITY RATIO WHERE COMBINED WITH A TAIL LAMP OR CLEARANCE LAMP[7][8]	MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd) RED LAMPS			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd) RED LAMPS			MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd) AMBER LAMPS			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd) AMBER LAMPS		
				Lighted Sections			Lighted Sections			Lighted Sections			Lighted Sections		
				1	2	3	1	2	3	1	2	3	1	2	3
1	20L	5U	3	10	12	15	50	60	70	15	20	25	80/84	100	120
		5D	3	10	12	15				15	20	25			
	5L	10U	3	16	19	22				26/27	30	35			
		10D[3]	3	16	19	22				26/27	30	35			
2	10L	5U	3	30	35	40	100	115	135	50	55	65	165	185	220
		H	3	40	47	55				65	75	90			
		5D	3	30	35	40				50	55	65			
3	5U	V	5	70	82	95	380	445	520	110	130	150	610/590	710	825
	H	5L	5	80	95	110				130/120	150	175			
		V	5	80	95	110				130	150	175			
		5R	5	80	95	110				130/120	150	175			
	5D	V	3	70	82	95				110	130	150			
4	10R	5U	3	30	35	40	100	115	135	50	55	65	165	185	220
		H	3	40	47	55				65	75	90			
		5D	3	30	35	40				50	55	65			
5	5R	10U	3	16	19	22	50	60	70	26/27	30	35	80/84	100	120
		10D[3]	3	16	19	22				26/27	30	35			
	20R	5U	3	10	12	15				15	20	25			
		5D	3	10	12	15				15	20	25			
MAXIMUM PHOTOMETRIC INTENSITY[4]				300	360	420				750	900	900			

[1] The measured values at each test point must not be less than 60% of the minimum value.

[2] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[3] Where turn signal lamps are mounted with their axis of reference less than 750 mm. above the road surface photometry requirements below 5° down may be met at 5° down rather than at the required downward angle.

[4] The maximum photometric intensity must not occur over any area larger than that generated by a 0.5° radius within a solid angle defined by the test point range

[5] Values preceded by a slash (/) apply only to multipurpose passenger vehicles, trucks, trailers, and buses of 2032 mm. or more in overall width.

[6] A double faced turn signal meeting the requirements of SAE J588e, *Turn Signal Lamps,* September 1970 installed on a truck tractor need only meet the photometric requirements to the left of the V-V axis for a left hand lamp and to the right of the V-V axis for a right hand lamp.

[7] Required only when combined turn signal lamp and clearance lamp is installed on a vehicle 2032 mm. or more in overall width.

[8] When a taillamp (or clearance lamp on a vehicle 2032 mm. or more in overall width) is combined with a rear turn signal lamp and the maximum luminous intensity of the taillamp (or clearance lamp) is located below horizontal and within an area generated by a 0.5° radius around a test point (1.0° radius on lamps installed on vehicle 2032 or more in overall width), the ratio for the test point may be computed by using the lowest value of the taillamp (or clearance lamp) luminous intensity within the generated area.

TABLE VIII: TAILLAMP PHOTOMETRY REQUIREMENTS

GROUP NUMBER	TEST POINT (degrees)		MINIMUM/MAXIMUM PHOTOMETRIC INTENSITY[1][2] (cd) N.R.-NO REQUIREMENT			GROUP MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd)		
			Lighted Sections			Lighted Sections		
			1	2	3	1	2	3
1	20L	5U	0.3/18	0.5/20	0.7/25	1.4	2.4	3.5
		5D	0.3/N.R.	0.5/N.R.	0.7/N.R.			
	5L	10U	0.4/18	0.7/20	1.0/25			
		10D[3]	0.4/N.R.	0.7/N.R.	2.0/N.R.			
2	10L	5U	0.8/18	1.4/20	2.0/25	2.4	4.2	6.0
		H	0.8/18	1.4/20	2.0/25			
		5D	0.8/N.R.	1.4/N.R.	2.0/N.R.			
3	5U	V	1.8/18	3.1/20	4.5/25	9.6	16.8	24.0
	H	5L	2.0/18	3.5/20	5.0/25			
		V	2.0/18	3.5/20	5.0/25			
		5R	2.0/18	3.5/20	5.0/25			
	5D	V	1.8/N.R.	3.1/N.R.	4.5/N.R.			
4	10R	5U	0.8/18	1.4/20	2.0/25	2.4	4.2	6.0
		H	0.8/18	1.4/20	2.0/25			
		5D	0.8/N.R.	1.4/N.R.	2.0/N.R.			
5	5R	10U	0.4/18	0.7/20	1.0/25	1.4	2.4	3.5
		10D[3]	0.4/N.R.	0.7/N.R.	2.0/N.R.			
	20R	5U	0.3/18	0.5/20	0.7/25			
		5D	0.3/N.R.	0.5/N.R.	0.7/N.R.			

[1] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[2] If the sum of intensity values for all points in the zone is not less than the specified total value for the zone, the measured intensity value for each individual test point is not required to meet the minimum value.

[3] Where taillamps are mounted with their axis of reference less than 750 mm. above the road surface photometry requirements below 5° down may be met at 5° down rather than at the required downward angle.

TABLE IX: STOP LAMP PHOTOMETRY REQUIREMENTS

GROUP NUMBER	TEST POINT (degrees)		MINIMUM PHOTOMETRIC INTENSITY RATIO WHERE COMBINED WITH A TAIL LAMP[7]	MINIMUM PHOTOMETRIC INTENSITY[1][2] (cd)			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)			GROUP MINIMUM PHOTOMETRIC INTENSITY (cd) (Applies to motor-driven cycle only)[5]		
				Lighted Sections			Lighted Sections			Lighted Sections		
				1	2	3	1	2	3	1	2	3
1	20L	5U	3	10	12	15	50	60	70	26	31	36
		5D	3	10	12	15						
	5L	10U	3	16	19	22						
		10D[4]	3	16	19	22						
2	10L	5U	3	30	35	40	100	115	135	50	59	69
		H	3	40	47	55						
		5D	3	30	35	40						
3	5U	V	5	70	82	95	380	445	445	190	226	261
	H	5L	3/5[6]	80	95	110						
		V	5	80	95	110						
		5R	5	80	95	110						
	5D	V	3	70	82	95						
4	10R	5U	3	30	35	40	100	115	135	50	59	69
		H	3	40	47	55						
		5D	3	30	35	40						
5	5R	10U	3	16	19	22	50	60	70	26	31	36
		10D[4]	3	16	19	22						
	20R	5U	3	10	12	15						
		5D	3	10	12	15						
MAXIMUM PHOTOMETRIC INTENSITY[3]				300	360	420						

[1] The measured values at each test point must not be less than 60% of the minimum value.

[2] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[3] The maximum photometric intensity must not occur over any area larger than that generated by a 0.5° radius within a solid angle defined by the test point range

[4] Where stop lamps are mounted with their axis of reference less than 750 mm. above the road surface photometry requirements below 5° down may be met at 5° down rather than at the required downward angle.

[5] Stop lamp group minimum photometry requirements for a motor-driven cycle whose speed attainable in 1 mile is 30 mph or less.

[6] Values preceded by a slash (/) apply only to lamps installed on multipurpose passenger vehicles, trucks, trailers, and buses of 2032 mm. or more in overall width.

[7] When a taillamp is combined with a stop lamp and the maximum luminous intensity of the taillamp is located below horizontal and within an area generated by a 0.5° radius around a test point (1.0° radius on lamps installed on vehicle 2032 or more in overall width), the ratio for the test point may be computed by using the lowest value of the taillamp luminous intensity within the generated area.

TABLE X: SIDE MARKER LAMP PHOTOMETRY REQUIREMENTS			
TEST POINT (degrees)		MINIMUM PHOTOMETRIC INTENSITY (cd)[2] RED LAMPS	MINIMUM PHOTOMETRIC INTENSITY (cd)[2] AMBER LAMPS
10U	45L[1]	0.25	0.62
	V	0.25	0.62
	45R[1]	0.25	0.62
H	45L[1]	0.25	0.62
	V	0.25	0.62
	45R[1]	0.25	0.62
10D[3]	45L[1]	0.25	0.62
	V	0.25	0.62
	45R[1]	0.25	0.62

[1] Where a side marker lamp installed on a motor vehicle less than 30 feet in overall length has the lateral angle nearest the other required side marker lamp on the same side of the vehicle reduced from 45° by design as specified by S7.4.1.1, the photometric intensity measurement may be met at the lesser angle.

[2] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[3] Where side marker lamps are mounted with their axis of reference less than 750 mm. above the road surface, photometry requirements below 5° down may be met at 5° down rather than at the specified required downward angle.

TABLE XI: CLEARANCE AND IDENTIFICATION LAMPS PHOTOMETRY REQUIREMENTS			
TEST POINT (degrees)		**MINIMUM PHOTOMETRIC INTENSITY (cd)[2] RED LAMPS**	**MINIMUM PHOTOMETRIC INTENSITY (cd)[2] AMBER LAMPS**
10U	45L[4]	0.25	0.62
	V	0.25	0.62
	45R[4]	0.25	0.62
H	45L[4]	0.25	0.62
	V	0.25	0.62
	45R[4]	0.25	0.62
10D[1]	45L[4]	0.25	0.62
	V	0.25	0.62
	45R[4]	0.25	0.62
MAXIMUM PHOTOMETRIC INTENSITY[3] (cd) RED LAMPS		15	

[1] Where clearance lamps or identification lamps are mounted with their axis of reference less than 750mm. above the road surface, photometry requirements below 5° down may be met at 5° down rather than at the specified required downward angle.

[2] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[3] When optically combined with a stop lamp, this maximum applies on or above the horizontal.

[4] Where clearance lamps are installed at locations other than on the front and rear due to the necessity to indicate the overall width of the vehicle, or for protection from damage during normal operation of the vehicle, they need not meet the photometric intensity requirement at any test point that is 45° inboard.

TABLE XII: BACKUP LAMP PHOTOMETRY REQUIREMENTS

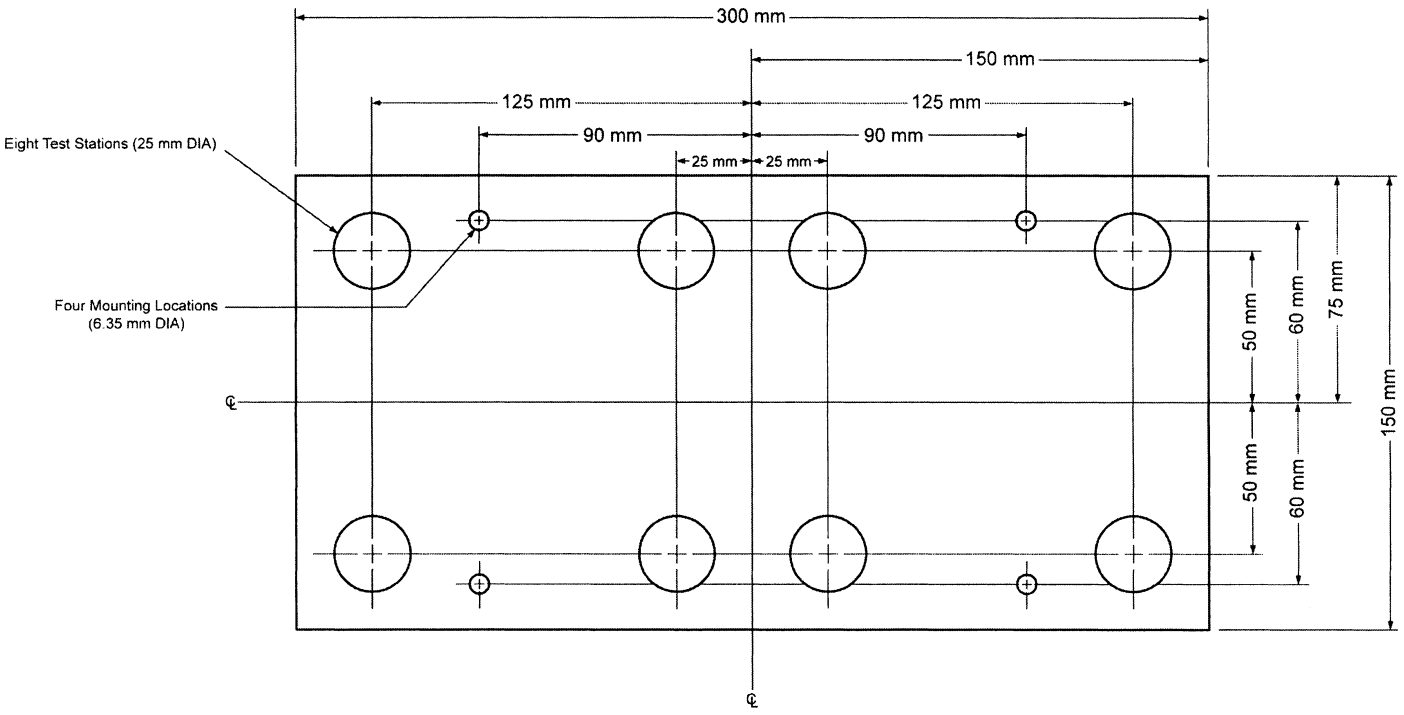
GROUP NUMBER	TEST POINT (degrees)		MAXIMUM PHOTOMETRIC INTENSITY (cd) ANY SINGLE LAMP N.R. – No requirement	TWO LAMP SYSTEMS[2][3]		SINGLE LAMP SYSTEM	
				MINIMUM PHOTOMETRIC INTENSITY (cd)[1][4]	GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)[1][4]	GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)
1	45L	5U	300	15	45	30	90
		H	300	15		30	
		5D	N.R.	15		30	
2	30L	H	300	25	50	50	100
		5D	N.R.	25		50	
3	10L	10U	300	10	100	20	200
		5U	300	20		40	
	V	10U	300	15		30	
		5U	300	25		50	
	10R	10U	300	10		20	
		5U	300	20		40	
4	10L	H	300	50	360	100	720
		5D	N.R.	50		100	
	V	H	300	80		160	
		5D	N.R.	80		160	
	10R	H	300	50		100	
		5D	N.R.	50		100	
5	30R	H	300	25	50	50	100
		5D	N.R.	25		50	
6	45R	5U	300	15	45	30	90
		H	300	15		30	
		5D	N.R.	15		30	

[1] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

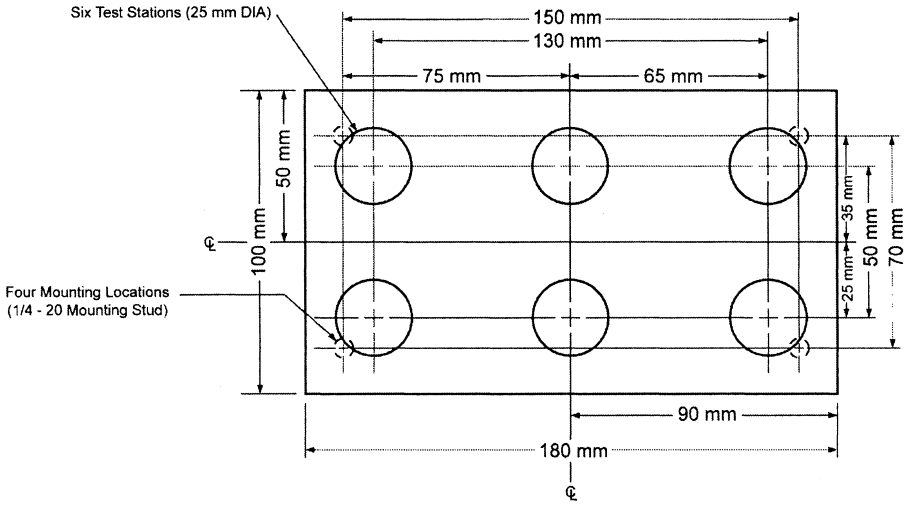
[2] When two lamps of the same or symmetrically opposite design are used, the tested photometric values along the vertical axis and the averages of the tested photometric values for the same horizontal test point left and right of vertical for one lamp must be used to determine compliance with the requirements.

[3] When two lamps of differing designs are used, they must be tested individually and the tested photometric values added to determine the combined units compliance with twice the stated requirements.

[4] If the sum of intensity values for all points in the zone is not less than the specified total value for the zone, the measured intensity value for each individual test point is not required to meet the minimum value.



Test Plate for Vehicles other than Motorcycles and Motor Driven Cycles



Test Plate for Motorcycles and Motor Driven Cycles

LICENSE PLATE LAMP TARGET LOCATIONS

TABLE XIII

TABLE XIV: PARKING LAMP PHOTOMETRY REQUIREMENTS					
GROUP NUMBER	**TEST POINT (degrees)**		**MINIMUM PHOTOMETRIC INTENSITY[(1)(2)] (cd)**	**MAXIMUM PHOTOMETRIC INTENSITY (cd)**	**GROUP MINIMUM PHOTOMETRIC INTENSITY (cd)**
1	20L	5U	0.4	125	2.4
		5D	0.4	250	
	5L	10U	0.8	125	
		10D[(3)]	0.8	250	
2	10L	5U	0.8	125	3.0
		H	1.4	125	
		5D	0.8	250	
3	5U	V	2.8	125	16.8
	H	5L	3.6	125	
		V	4.0	125	
		5R	3.6	125	
	5D	V	2.8	250	
4	10R	5U	0.8	125	3.0
		H	1.4	125	
		5D	0.8	250	
5	5R	10U	0.8	125	2.4
		10D[(3)]	0.8	250	
	20R	5U	0.4	125	
		5D	0.4	250	

(1) The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

(2) If the sum of intensity values for all points in the zone is not less than the specified total value for the zone, the measured intensity value for each individual test point is not required to meet the minimum value.

(3) Where parking lamps are mounted with their axis of reference less than 750 mm. above the road surface photometry requirements below 5° down may be met at 5° down rather than at the required downward angle.

TABLE XV: HIGH-MOUNTED STOP LAMP PHOTOMETRY REQUIREMENTS				
GROUP NUMBER	**TEST POINT (degrees)**		**MINIMUM PHOTOMETRIC INTENSITY[1][2][3] (cd)**	**GROUP MINIMUM PHOTOMETRIC INTENSITY[3] (cd)**
1	5U	V	25	125
	H	5L	25	
	H	V	25	
	H	5R	25	
	5D	V	25	
2	5U	5R	25	98
	5U	10R	16	
	H	10R	16	
	5D	10R	16	
	5D	5R	25	
3	5U	5L	25	98
	5U	10L	16	
	H	10L	16	
	5D	10L	16	
	5D	5L	25	
4	10U	10L	8	32
	10U	V	16	
	10U	10R	8	
MAXIMUM PHOTOMETRIC INTENSITY[4]			160	

[1] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

[2] The photometric intensity at each test point must not be less than 60% of the specified minimum value when considering overall group or zone photometry values.

[3] Where a pair of lamps identical in size and shape are used due to vehicle construction, they together must meet photometric requirements.

[4] The maximum photometric intensity must not occur over any area larger than that generated by a 0.25° radius within a solid cone angle within the rectangle bounded by test points 10U-10L, 10U-10R, 5D-10L, and 5D-10R.

TABLE XVI: REFLEX REFLECTOR PHOTOMETRY REQUIREMENTS

OBSERVATION ANGLE (degrees)	ENTRANCE ANGLE (degrees)	MINIMUM PERFORMANCE					
		RED REFLECTORS		AMBER REFLECTORS		WHITE REFLECTORS	
		(cd/incident ft-c)	(mcd/lux)	(cd/incident ft-c)	(mcd/lux)	(cd/incident ft-c)	(mcd/lux)
0.2	0	4.5	420	11.25	1050	18	1680
	10U	3.0	280	7.5	700	12	1120
	10D[1]	3.0	280	7.5	700	12	1120
	20L	1.5	140	3.75	350	6	560
	20R	1.5	140	3.75	350	6	560
1.5	0	0.07	6	0.175	15	0.28	24
	10U	0.05	5	0.125	12.5	0.2	20
	10D[1]	0.05	5	0.125	12.5	0.2	20
	20L	0.03	3	0.075	7.5	0.12	12
	20R	0.03	3	0.075	7.5	0.12	12

(1) Where reflex reflectors are mounted with their axis of reference less than 750 mm. above the road surface, photometry requirements below 5° down may be met at 5° down rather than at the required specified downward angle.

TABLE XVI: ADDITIONAL PHOTOMETRY REQUIREMENTS FOR CONSPICUITY REFLEX REFLECTORS

OBSERVATION ANGLE (degrees)	ENTRANCE ANGLE (degrees)	MINIMUM PERFORMANCE		
		RED (mcd/lux)	WHITE HORIZONTAL ORIENTATION (mcd/lux)	WHITE VERTICAL ORIENTATION (mcd/lux)
0.2	0	300	1250	1680
	20L TO 20 R			560
	30L TO 30 R	300	1250	
	45L TO 45R	75	300	
	10U TO 10D			1120

TABLE XVI: RETROREFLECTIVE SHEETING PHOTOMETRY REQUIREMENTS

OBSERVATION ANGLE (degrees)	ENTRANCE ANGLE (degrees)	MINIMUM PERFORMANCE					
		GRADE DOT-C2		GRADE DOT-C3		GRADE DOT-C4	
		WHITE	RED	WHITE	RED	WHITE	RED
		(cd/lux/sq.m.)	(cd/lux/sq.m.)	(cd/lux/sq.m.)	(cd/lux/sq.m.)	(cd/lux/sq.m.)	(cd/lux/sq.m.)
0.2	-4	250	60	165	40	125	30
	30	250	60	165	40	125	30
	45	60	15	40	10	30	8
0.5	-4	65	15	43	10	33	8
	30	65	15	43	10	33	8
	45	15	4	10	3	8	2

TABLE XVII: SCHOOL BUS SIGNAL LAMP PHOTOMETRY REQUIREMENTS

TEST POINT (degrees)		MINIMUM PHOTOMETRIC INTENSITY (cd)[2] RED LAMPS	MINIMUM PHOTOMETRIC INTENSITY (cd) AMBER LAMPS
5U	20L	150	375
	10L	300	750
	5L	300	750
	V	300	750
	5R	300	750
	10R	300	750
	20R	150	375
H	30L	30	75
	20L	180	450
	10L	400	1000
	5L	500	1250
	V	600	1500
	5R	500	1250
	10R	400	1000
	20R	180	450
	30R	30	75
5D	30L	30	75
	20L	200	500
	10L	300	750
	5L	450	1125
	V	450	1125
	5R	450	1125
	10R	300	750
	20R	200	500
	30R	30	75
10D[1]	5L	40	100
	V	40	100
	5R	40	100

[1] Where school bus signal lamps are mounted with their axis of reference less than 750 mm. above the road surface, photometry requirements below 5° down may be met at 5° down rather than at the specified required downward angle.

[2] The photometric intensity values between test points must not be less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line.

TABLE XVIII. HEADLAMP UPPER BEAM PHOTOMETRY REQUIREMENTS

TEST POINT (degrees)		UPPER BEAM #1 (UB1)		UPPER BEAM #2 (UB2)		UPPER BEAM #3 (UB3)	
		MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)
2U	V		1,500		1,500		1,000
1U	3L &3R		5,000		5,000		2,000
H	V	70,000	40,000	75,000	40,000	75,000	20,000
H	3L & 3R		15,000		15,000		10,000
H	6L & 6R		5,000		5,000		3,250
H	9L & 9R		3,000		3,000		1,500
H	12L & 12R		1,500		1,500		750
1.5D	V		5,000		5,000		5,000
1.5D	9L & 9R		2,000		2,000		1,500
2.5D	V		2,500		2,500		2,500
2.5D	12L & 12R		1,000		1,000		750
4D	V	5,000		12,000		5,000	
		UPPER BEAM #4 (UB4)		UPPER BEAM #5 (UB5)		UPPER BEAM #6 (UB6)	
2U	V		750		750		1,500
1U	3L &3R		3,000		2,000		5,000
H	V	60,000	18,000	15,000	7,000	70,000	40,000
H	3L & 3R		12,000		3,000		15,000
H	6L & 6R		3,000		2,000		5,000
H	9L & 9R		2,000		1,000		3,000
H	12L & 12R		750		750		1,500
1.5D	V		3,000		2,000		5,000
1.5D	9L & 9R		1,250		750		1,000
2.5D	V		1,500		1,000		
2.5D	12L & 12R		600		400		
4D	V	5,000		2,500		5,000	

TABLE XIX. HEADLAMP LOWER BEAM PHOTOMETRY REQUIREMENTS

TEST POINT (degrees)		LOWER BEAM # 1M (LB1M)		LOWER BEAM # 1V (LB1V)		LOWER BEAM # 2M (LB2M)		LOWER BEAM # 2V (LB2V)	
		MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)
[1] 10U to 90U	[1] 90L to 90R	125		125		125		125	
4U	8L & 8R		64		64		64		64
2U	4L		135		135		135		135
1.5U	1R to 3R		200		200		200		200
1.5U	1R to R	1,400		1,400		1,400		1,400	
1U	1.5L to L	700		700		700		700	
0.5U	1.5L to L	1,000		1,000		1,000		1,000	
0.5U	1R to 3R	2,700	500	2,700	500	2,700	500	2,700	500
H	V	5,000		5,000					
H	4L		135		135		135		135
H	8L		64		64		64		64
0.5D	1.5L to L	3,000				3,000			
0.5D	1.5R	20,000	10,000			20,000	10,000		
0.6D	1.3R				10,000				10,000
0.86D	V				4,500				4,500
0.86D	3.5L			12,000	1,800			12,000	1,800
1D	6L		1,000				1,000		
1.5D	2R		15,000		15,000		15,000		15,000
1.5D	9L & 9R		1,000				1,000		
2D	9L & 9R				1,250				1,250
2D	15L & 15R		850		1,000		850		1,000
2.5D	V								
2.5D	12L & 12R								
4D	V	7,000		10,000					
4D	4R	12,500		12,500		12,500		12,500	
4D	20L & 20R				300				300

[1] These test points are boundaries, all test points that fall into the area defined by these points must meet the listed photometry requirement.

TABLE XIX. HEADLAMP LOWER BEAM PHOTOMETRY REQUIREMENTS

TEST POINT (degrees)		LOWER BEAM #3 M (LB3M)		LOWER BEAM # 3V (LB3V)		LOWER BEAM # 4M (LB4M)		LOWER BEAM # 5M (LB5M)	
		MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)
[1] 10U to 90U	[1] 90L to 90R	125		125		125		125	
4U	8L & 8R		64		64		64		64
2U	4L		135		135		135		135
1.5U	1R to 3R		200		200		200		200
1.5U	1R to R	1,400		1,400		1,400		1,400	
1U	1.5L to L	700		700		700		700	
0.5U	1.5L to L	1,000		1,000		1,000		1,000	
0.5U	1R to 3R	2,700	500	2,700	500	2,700	500	2,700	500
H	V							5,000	
H	4L		135		135		135		135
H	8L		64		64		64		64
0.5D	1.5L to L	2,500						3,000	
0.5D	1.5R	20,000	8,000			20,000	8,000	20,000	10,000
0.6D	1.3R				10,000				
0.86D	V				4,500				
0.86D	3.5L			12,000	1,800				
1D	6L		750				750		1,000
1.5D	2R		15,000		15,000		15,000		15,000
1.5D	9L & 9R		750				750		1,000
2D	9L & 9R				1,250				
2D	15L & 15R		700		1,000		700		850
2.5D	V								2,500
2.5D	12L & 12R								1,000
4D	V							7,000	
4D	4R	12,500		12,500		12,500		12,500	
4D	20L & 20R				300				

[1] These test points are boundaries, all test points that fall into the area defined by these points must meet the listed photometry requirement.

TABLE XIX. HEADLAMP LOWER BEAM PHOTOMETRY REQUIREMENTS			
TEST POINT (degrees)		LOWER BEAM # 4 V (LB4V)	
		MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)
[1] 10U to 90U	[1] 90L to 90R	125	
4U	8L & 8R		64
2U	4L		135
1.5U	1R to 3R		200
1.5U	1R to R	1,400	
1U	1.5L to L	700	
0.5U	1.5L to L	1,000	
0.5U	1R to 3R	2,700	500
H	V	5,000	
H	4L		135
H	8L		64
0.5D	1.5L to L		
0.5D	1.5R		
0.6D	1.3R		10,000
0.86D	V		4,500
0.86D	3.5L	12,000	1,800
1D	6L		
1.5D	2R		15,000
1.5D	9L & 9R		
2D	9L & 9R		1,250
2D	15L & 15R		1,000
2.5D	V		2,500
2.5D	12L & 12R		1,000
4D	V	10,000	
4D	4R	12,500	
4D	20L & 20R		300

[1] These test points are boundaries, all test points that fall into the area defined by these points must meet the listed photometry requirement.

TABLE XX. MOTORCYCLE AND MOTOR DRIVEN CYCLE HEADLAMP PHOTOMETRY REQUIREMENTS

LOWER BEAM

TEST POINT (degrees)		MOTORCYCLE		MOTOR DRIVEN CYCLE		MOTOR DRIVEN CYCLE with Single Lamp System	
		MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)	MAXIMUM PHOTOMETRIC INTENSITY (cd)	MINIMUM PHOTOMETRIC INTENSITY (cd)
1.5U	1R to R	1,400		1,400			
1.5U	1R to 3R					1,400	
1U	1.5L to L	700		700		700	
0.5U	1.5L to L	1,000		1,000		1,000	
0.5U	1R to 3R	2,700		2,700		2,700	
1.5D	9L and 9R		700				
2D	V		7,000		5,000		4,000
2D	3L and 3R		4,000		3,000		3,000
2D	6L and 6R		1,500		1,500		1,500
2D	12L and 12R		700				
3D	6L and 6R		800		800		
4D	V		2,000		2,000		1,000
4D	4R	12,500		12,500			12,500

UPPER BEAM

2U	V		1,000		
1U	3L and 3R		2,000		2,000
H	V		12,500		10,000
0.5D	V		20,000		20,000
0.5D	3L and 3R		10,000		5,000
0.5D	6L and 6R		3,300		2,000
0.5D	9L and 9R		1,500		
0.5D	12L and 12R		800		
1D	V		17,500		15,000
2D	V		5,000		5,000
3D	V		2,500		2,500
3D	6L and 6R				800
3D	9L and 9R		1,500		
3D	12L and 12R		300		
4D	V		1,500		
4D	V	7,500		7,500	
ANYWHERE IN BEAM		75,000		75,000	

TABLE XXI. ASSOCIATED EQUIPMENT PHYSICAL TEST REQUIREMENTS

APPLICABLE ITEM	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Turn signal operating unit (If stop signals also operate through the turn signal operating unit, the voltage drop of any additional switch contacts must meet the same requirements as the turn signal contacts)	Durability test	The sample unit is operated with the maximum bulb load it will experience on the vehicle on which it will be installed. Bulbs that fail during the test are replaced. The turn signal flasher is not to be included in the test circuit. When the unit includes a self-canceling means, the test equipment is arranged so that the unit will be turned "off" in its normal operating manner. The test is conducted at a rate not to exceed 15 complete cycles per minute. One complete cycle consists of the following sequence: off, left turn, off, right turn, and return to off. During the test the unit is operated at 12.8 volts from a power supply meeting the following requirements: an output current that is at least 10 times the load current, voltage regulation that allows a voltage change of less than 5%, ripple voltage of less than 5%, a response time of not more than 25 milliseconds rise time from 0 to rated current at rated voltage in a pure resistance circuit, and an output impedance of not more than 0.005 ohms dc. The voltage drop from the input terminal of the device to each lamp output terminal, including 3 in. of 16 or 18 gage wire, is measured at the start of the test, at intervals of not more than 25,000 cycles during the test, and at the completion of the test.	A turn signal operating unit is considered to have met the requirements of the durability test if it remains operational after completing at least 100,000 cycles (175,000 cycles for a unit installed on a multipurpose passenger vehicle, truck, or bus 2032 mm. or more in overall width) and the voltage drop between the input contact and any output contact, including required length of wire, does not exceed 0.25 volts.
Vehicular hazard warning signal operating unit	Durability test	The sample unit is operated at its rated voltage with the maximum bulb load it will experience on the vehicle on which it will be installed. Bulbs that fail during the test are replaced. The hazard warning signal flasher is not to be included in the test circuit. The unit is turned "on" and "off" in its normal operating manner at a rate not to exceed 15 complete cycles per minute. One complete cycle consists of the sequence: off, on, and return to off. The voltage drop from the input terminal of the device to each lamp output terminal, including 3 in. of 16 or 18 gage wire, is measured at the start of the test and at the completion of the test. The test consists of 10,000 cycles at an ambient temperature of 75°±10° F followed by 1 hour constant "on" at the same temperature.	A hazard warning signal operating unit is considered to have met the requirements of the durability test if it remains operational after completing 10,000 cycles and the 1 hour constant "on" and the voltage drop between the input contact and any output contact, including required length of wire, does not exceed 0.3 volts both at the start and completion of the test.

TABLE XXI. ASSOCIATED EQUIPMENT PHYSICAL TEST REQUIREMENTS

APPLICABLE ITEM	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Turn signal flasher (The standardized test circuit of SAE J823b, *Flasher Test Equipment,* April 1968 is used for turn signal flasher tests)	Starting time test (Variable load flashers are tested with their minimum and their maximum design load connected.)	Twenty sample flashers chosen from random from fifty representative samples are subjected to a starting time test using the standardized test circuit. The test is conducted in an ambient temperature of 75°±10° F with the design load connected and the power source for the test circuit adjusted to apply design voltage at the bulbs. The time measurement starts when the voltage is initially applied. Compliance is based on an average of three starts for each sample separated by a cooling interval of 5 minutes.	The requirements of the starting time test are considered to have been met if 17 of 20 samples comply with the following: A flasher having normally closed contacts must open (turn off) within 1.0 sec. for a device designed to operate two signal lamps, or within 1.25 sec. for a device designed to operate more than two lamps. A flasher having normally open contacts must complete the first cycle (close the contacts and then open the contacts) within 1.5 sec.
	Voltage drop test	The same twenty sample flashers used in the starting time test are subjected to a voltage drop test using the standardized test circuit. The test is conducted at an ambient temperature of 75°±10° F with the maximum design load connected and the power source for the test circuit adjusted to apply 12.8 volts at the bulb. The voltage drop is measured between the input and load terminals of the flasher during the "on" period after the flashers have completed at least five consecutive cycles.	The requirements of the voltage drop test are considered to have been met if 17 of 20 samples comply with the following: The lowest voltage drop across any flasher must not exceed 0.80 volt.

TABLE XXI. ASSOCIATED EQUIPMENT PHYSICAL TEST REQUIREMENTS

APPLICABLE ITEM	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Turn signal flasher (The standardized test circuit of SAE J823b, *Flasher Test Equipment,* April 1968 is used for turn signal flasher tests)	Flash rate and percent current "on" time test (Variable load flashers are tested with their minimum and their maximum design load connected.)	The same twenty sample flashers used in the voltage drop test are subjected to a flash rate and percent of current "on" time test using the standardized test circuit with the design load connected and design voltage applied to the bulbs. Compliance is determined using the following combinations of ambient temperature and bulb voltage: 12.8 volts and 75°±10° F 12.0 volts and 0°±5° F 15.0 volts and 0°±5° F 11.0 volts and 125°±5° F 14.0 volts and 125°±5° F Flash rate and percent current "on" time are measured after the flashers have completed five consecutive cycles and are determined by an average of at least three consecutive cycles.	The requirements of the flash rate and percent current "on" time test are considered to have been met if 17 of 20 samples comply with the following: The performance of a normally closed type flasher must be within the unshaded portion of the polygon shown in Figure 2. The performance of a normally open type flasher must be within the entire rectangle including the shaded areas shown in Figure 2.
	Durability test	Twenty sample flashers chosen from random from the thirty samples not used in the previous tests are subjected to a durability test using the standardized test circuit. Conformance of the samples to the starting time, voltage drop, and flash rate and percent of current "on" time tests (limited to the 12.8 volts and 75°±10° F test condition only) is established. The test is conducted on each sample with the maximum design load connected and 14 volts applied to the input terminals of the standardized test circuit. The test cycle consists of 15 sec. on followed by 15 sec. off for a total time of 200 hours in an ambient temperature of 75°±10° F.	The requirements of the durability test are considered to have been met if after completion 17 of 20 samples comply with the performance requirements of the starting time, voltage drop, and flash rate and percent of current "on" time tests (limited to the 12.8 volts and 75°±10° F test condition only) when tested in the standard test circuit with design load and 12.8 volts applied to the bulbs.

TABLE XXI. ASSOCIATED EQUIPMENT PHYSICAL TEST REQUIREMENTS

APPLICABLE ITEM	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Vehicular hazard warning signal flasher (The standardized test circuit of SAE J823b, *Flasher Test Equipment,* April 1968 is used for hazard warning signal flasher tests)	Starting time test	Twenty sample flashers chosen from random from fifty representative samples are subjected to a starting time test using the standardized test circuit. The test is conducted at an ambient temperature of 75°+/-10° F with the minimum and maximum load connected and the power source for the test circuit adjusted to apply design voltage at the bulbs. The time measurement starts when the voltage is initially applied.	The requirements of the starting time test are considered to have been met if 17 of 20 samples comply with the following: A flasher having normally closed contacts must open (turn off) within 1.5 sec. after the voltage is applied. A flasher having normally open contacts must complete the first cycle (close the contacts and then open the contacts) within 1.5 sec. after the voltage is applied.
	Voltage drop test	The same twenty sample flashers used in the starting time test are subjected to a voltage drop test using the standardized test circuit. The test is conducted at an ambient temperature of 75°±10° F with the maximum design load connected and the power source for the test circuit adjusted to apply design voltage at the bulbs. The voltage drop is measured between the input and load terminals of the flasher during the "on" period after the flashers have completed at least five consecutive cycles.	The requirements of the voltage drop test are considered to have been met if 17 of 20 samples comply with the following: The lowest voltage drop across any flasher must not exceed 0.8 volt.
	Flash rate and percent current "on" time test	The same twenty sample flashers used in the voltage drop test are subjected to a flash rate and percent of current "on" time test using the standardized test circuit and applying loads of from two signal lamps to the maximum design loading including pilot indicator. Compliance is determined using the following combinations of ambient temperature and bulb voltage: 12.8 volts and 75°±10° F 11.0 volts and 125°±5° F 11.0 volts and 0°±5° F 13.0 volts and 125°±5° F 13.0 volts and 0°±5° F Flash rate and percent current "on" time are measured after the flashers have completed five consecutive cycles and are determined by an average of at least three consecutive cycles.	The requirements of the flash rate and percent current "on" time test are considered to have been met if 17 of 20 samples comply with the following: The performance of a normally closed type flasher must be within the unshaded portion of the polygon shown in Figure 2. The performance of a normally open type flasher must be within the entire rectangle including the shaded areas shown in Figure 2.

TABLE XXI. ASSOCIATED EQUIPMENT PHYSICAL TEST REQUIREMENTS

APPLICABLE ITEM	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Vehicular hazard warning signal flasher (The standardized test circuit of SAE J823b, *Flasher Test Equipment,* April 1968 is used for hazard warning signal flasher tests)	Durability test	Twenty sample flashers chosen from random from the thirty samples not used in the previous tests are subjected to a durability test using the standardized test circuit. Conformance of the samples to the starting time, voltage drop, and flash rate and percent of current "on" time tests (limited to the 12.8 volts and 75°±10° F test condition only) is established. The test is conducted on each sample with the maximum design load connected and 13.0 volts applied to the input terminals of the standardized test circuit. The flasher is subjected to continuous flashing for a total time of 36 hours at an ambient temperature of 75°±10° F.	The requirements of the durability test are considered to have been met if, after completion, 17 of 20 samples comply with the performance requirements of the starting time, voltage drop, and flash rate and percent of current "on" time tests (limited to the 12.8 volts and 75°±10° F test condition only) when tested in the standard test circuit with the power source adjusted to provide design voltage to the bulbs and with a minimum load of two signal lamp bulbs and the maximum design load at an ambient temperature of 75°±10° F.
Semiautomatic headlamp beam switching device (all tests are conducted with 13 volts input to the device unless otherwise specified)	Sensitivity test	The sample device is mounted in and operated in the laboratory in the same environment as that encountered on the vehicle, that is tinted glass, grille work, etc. and adjusted for sensitivity in accordance with the manufacturer's instructions. It is exposed to a light source capable of providing a variable intensity of at least 1.5 cd. to 150 cd. at 100 feet from the sample device. The device is switched to the lower beam mode in accordance with the "Dim" limits specified and switched back to the upper beam mode in accordance with the "Hold" limits specified for the specified test positions. To provide more complete information on sensitivity throughout the required vertical and horizontal angles, a set of constant footcandle curves is made at "dim" sensitivities of 17, 25, and 100 cd. at 100 ft.	Operating Limits

Test position (degrees)	Dim (cd. at 100 ft.)	Hold (cd. at 100 ft.)	Test position (degrees)
H	V	Adjust to 15	H
H	2L	25 max.	H
H	4L	40 max.	H
H	6L	75 max.	H
H	2R	25 max.	H
H	5R	100 max. to 40 min.	H
1D	V	30 max.	1D
1U	V	30 max.	1U

There must be no sensitivity voids shown in the constant footcandle curves within the area limited by the test positions

TABLE XXI. ASSOCIATED EQUIPMENT PHYSICAL TEST REQUIREMENTS

APPLICABLE ITEM	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Semiautomatic headlamp beam switching device (all tests are conducted with 13 volts input to the device unless otherwise specified)	Voltage regulation test	The sensitivity of the sample device is adjusted so that it complies with the sensitivity test. The "hold" sensitivity is measured at the H-V test position at 11 volts input to the device and at 15 volts input to the device.	The device must switch to the upper beam mode at between 8 (cd. At 100 ft.) and 25 (cd. At 100 ft.) with the input voltage at 11 volts and at 15 volts.
	Manual override test	The sensitivity of the sample device is adjusted so that it complies with the sensitivity test. The device is exposed to a test light that causes it to switch to the lower beam mode. The manufacturer's instructions are followed to cause the device to override the test light and switch to upper beam. In a similar manner, the test light is extinguished to cause the device to switch to the upper beam mode. Again the manufacturer's instructions are followed to cause the device to switch to lower beam.	The device, when operated in accordance with the manufacturer's instructions, must switch to the opposite beam with the test light energized and with the test light extinguished.
	Warmup test	The sensitivity of the sample device is adjusted so that it complies with the sensitivity test and the test lamp extinguished. The test lamp will then be energized at a level of 25 (cd. at 100 ft.) at the H-V position of the device and the time for the device to switch to lower beam is measured.	The period from the time of test lamp energization to the time the device switches to lower beam must not exceed 10 sec.
	Temperature test	The sample device is exposed for 1 hour in a temperature corresponding to that at the device mounting location. For a device mounted in the passenger compartment or the engine compartment, this temperature is 210°F; mounted elsewhere, the temperature is 150°F. After this exposure, the H-V "dim" sensitivity of the sample device is measured over the temperature range of -30°F to +100°F.	The device must switch to the lower beam mode between 8 (cd. at 100 ft.) and 25 (cd. at 100 ft.) over the temperature range of -30°F to +100°F.
	Dust test	The sensitivity of the sample device is adjusted so that it complies with the sensitivity test. The device is then subjected to the dust test of Table XXII. At the conclusion of the dust exposure, the lens of the device is wiped clean and the H-V "dim" sensitivity of the sample device is measured.	The device must switch to the lower beam mode between 8 (cd. at 100 ft.) and 25 (cd. at 100 ft.).

TABLE XXI. ASSOCIATED EQUIPMENT PHYSICAL TEST REQUIREMENTS

APPLICABLE ITEM	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Semiautomatic headlamp beam switching device (all tests are conducted with 13 volts input to the device unless otherwise specified)	Corrosion test	The sensitivity of the device is adjusted so that it complies with the sensitivity test. All system components located outside the passenger compartment are subjected to the corrosion test of Table XXII with the device not operating. Water is not be allowed to accumulate on any connector socket. At the conclusion of the test, the H-V "dim" sensitivity of the sample device is measured.	The device must switch to the lower beam mode between 8 (cd. at 100 ft.) and 25 (cd. at 100 ft.).
	Vibration test	The sensitivity of the device is adjusted so that it complies with the sensitivity test and the mechanical aim of the photounit determined. The device is mounted in proper vehicle position and subjected to vibration of 5g constant acceleration for ½ hour in each of three directions; vertical, horizontal and parallel to the vehicle longitudinal axis, and horizontal and normal to the vehicle longitudinal axis. The vibration frequency is varied from 30 to 200 and back to 30 cycles per second over a period of 1 minute. The operation of the device is confirmed during the test. At the conclusion of the test, the H-V "dim" sensitivity of the sample device and the mechanical aim of the photounit are measured.	The device must switch to the lower beam mode between 8 (cd. at 100 ft.) and 25 (cd. at 100 ft.). The mechanical aim of the device photounit must not have changed by more than 0.25° from the initial value.
	Sunlight test	The device is exposed for 1 hour in bright noonday sunlight (5000 fc. minimum illumination with a clear sky) with the photounit aimed as it would be in service and facing an unobstructed portion of the horizon in the direction of the sun. The device is then rested for 1 hour in normal room light at room temperature and the H-V "dim" sensitivity of the sample device must be measured.	The device must switch to the lower beam mode between 8 (cd. at 100 ft.) and 25 (cd. at 100 ft.).
	Durability test	The sensitivity of the device is adjusted so that it complies with the sensitivity test. The device photounit operated at a 13.0 input voltage on a cycle of 90 minutes on and 30 minutes off must be activated by a 60 cd. light source at 100 ft., or equivalent, which is cycled on and off 4 times per minute for a period of 200 hours. The device then rests for 2 hours in a lighted area of 50 to 150 fc., after which the H-V "dim" sensitivity is measured.	The device must switch to the lower beam mode between 8 (cd. at 100 ft.) and 25 (cd. at 100 ft.).
	Return to upper beam test	The sensitivity of the device is adjusted so that it complies with the sensitivity test. The lens of the photounit is exposed to light of 100 fc. for 10 sec.	The device must switch to upper beam mode within 2 sec. after the 100 fc light is extinguished.

TABLE XXII: SIGNAL LAMP, MOTORCYCLE HEADLAMP, AND REFLECTIVE DEVICES PHYSICAL TEST REQUIREMENTS		
TEST	**PROCEDURE**	**PERFORMANCE REQUIREMENTS**
Vibration test	The device, as mounted on the support supplied, is bolted to the anvil end of the table of the vibration test machine of SAE J577, *Vibration Test Machine,* April 1964, and vibrated approximately 750 cpm through a distance of 1/8 in. The table is spring mounted at one end and fitted with steel calks on the underside of the other end. The calks are to make contact with the steel anvil once during each cycle at the completion of the fall. The rack is operated under a spring tension of 60 to 70 lb. The test is conducted for a period of 1 hour.	After completion of the vibration test, a device showing evidence of material physical weakness, lens or reflector rotation, displacement or rupture of parts except bulb failures, is considered to have failed, providing that the rotation of lens or reflector is not considered as a failure when tests show compliance with specifications despite such rotation.
Moisture test	The device is mounted in its normal operating position with all drain holes open and subjected to a precipitation of 0.1 in. of water per minute, delivered at an angle of 45° from a nozzle with a solid cone spray. During the test, the device is revolved about its vertical axis at a rate of 4 rpm for a period of 12 hours followed by a drain period where the device does not rotate and the spray stops.	After completion of the moisture test, the device is examined for moisture accumulation. Accumulation of moisture in excess of 2 cc. constitutes a failure.
Dust test	The device, with any drain hole closed, is mounted in its normal operating position, at lease 6 in. from the wall in a cubical box with inside measurements of 3 ft on each side containing 10 lb of fine powered cement in accordance with ASTM C 150-56, *Specification for Portland Cement.* At intervals of 15 minutes, during a test period of 5 hours, the dust is agitated by compressed air or fan blower by projecting blasts of air for a 2 sec. period in a downward direction into the dust in such a way that the dust is completely and uniformly diffused throughout the entire cube and allowed to settle.	After the completion of the dust test, the exterior surface of the device is cleaned. If, after a photometry test, the maximum photometric intensity of the device is not more than 10% less than the maximum photometric intensity of the same device after being cleaned both inside and outside, the device is considered to have met the requirements of the dust test.
Corrosion test	The device is subjected to a salt spray test in accordance with the latest version of ASTM B117, *Method of Salt Spray (Fog) Testing,* for a period of 50 hr., consisting of two periods of 24 hour exposure followed by a 1 hr drying time.	After the completion of the corrosion test, no evidence of excessive corrosion is permitted which would affect the proper function of the device.
Out of focus test	The device is tested for photometry using bulbs having each of four out-of-focus filament positions. Where conventional bulbs with two pin bayonet bases are used, tests are made with the light source 0.060 in above, below, ahead, and behind the designated position. If prefocused bulbs are used, the limiting positions at which tests are made are 0.020 in above, below, ahead, and behind the designated position. The sample device may be reaimed for each of the out-of-focus positions of the light source.	The minimum photometric values for the out-of-design position are 80% of the in-design position.

TABLE XXII: LAMP AND REFLECTIVE DEVICES PHYSICAL TEST REQUIREMENTS

TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
Color test The color of the sample device complies when tested by either the Visual Method or the Tristimulus Method. The device is operated at design voltage. Components (bulbs, caps, lenses, and the like) are tested in a fixture or manner simulating the intended application. The lamp is allowed to reach operating temperature before measurements are made. The entire light emitting surface of the sample is visible from any point on the entrance window of the test instrument. The distance between the test instrument and the sample should be great enough so that further increases in distance will not affect the results.	*Visual method.* The color of light from the sample device is compared visually with the color of the light from a standard. The standard may consist of a filter or limit glass. In the case of white, CIE Source A is used only as a color reference. The chromaticity coordinates of the color standards are as close as possible to the limits listed. The color of the standard filters is determined spectrophotometrically.	The appropriate requirement for each color is as listed: *Red* – Red is not acceptable if it is less saturated (paler), yellower, or bluer than the limit standards. *Yellow (Amber)* – Yellow is acceptable if it is less saturated (paler), greener, or redder than the limit standards. *White* – White is not acceptable if its color differs materially from that of CIE Source A. *Green* – Green is acceptable if it is less saturated (paler), yellower, or bluer than the limit standards. *Blue* – Blue is not acceptable if it is less saturated, greener, or redder than the limit standards.
	Tristimulus method. The color of light from the H-V point of a sample device is measured by photoelectric receivers with spectral responses that approximate CIE standard spectral tristimulus valves. A sphere may be used to integrate light from a colored source provided that the color shift that results from the spectral selectivity of the sphere paint be corrected by the use of a filter, correction factor, or an appropriate calibration. Where the sample device does not have uniform spectral characteristics in all useful directions, color measurements are made at as many directions of view as are required to evaluate the color for those directions that apply to the end use of the device.	The color must comply with the appropriate requirement. *Red* – the color of light emitted must fall within the following boundaries: $y = 0.33$ (yellow boundary) $y = 0.98 - x$ (purple boundary) *Yellow (Amber)* – – the color of light emitted falls within the following boundaries: $y = 0.39$ (red boundary) $y = x - 0.12$ (green boundary) $y = 0.79 - 0.67x$ (white boundary) *White (achromatic)* – the color of light emitted must fall within the following boundaries: $x = 0.31$ (blue boundary) $y = 0.44$ (green boundary) $x = 0.50$ (yellow boundary) $y = 0.38$ (red boundary) $y = 0.15 + 0.64x$ (green boundary) $y = 0.05 + 0.75x$ (purple boundary) *Green* – the color of light emitted must fall within the following boundaries: $y = 0.73 - 0.73x$ (yellow boundary) $y = 0.50 - 0.50x$ (blue boundary) $x = 0.63y - 0.04$ (white boundary) *Blue (signal blue)* – the color of light emitted must fall within the following boundaries: $y = 0.32$ (green boundary) $x = 0.40 - y$ (white boundary) $x = 0.16$ (white boundary) $x = 0.13 + 0.60y$ (violet boundary)

TABLE XXII: LAMP AND REFLECTIVE DEVICES PHYSICAL TEST REQUIREMENTS

APPLICATION	TEST	SAMPLES	PROCEDURE	PERFORMANCE REQUIREMENTS	
Plastic optical materials tests. All plastic materials used for optical parts such as lenses and reflectors must conform to the requirements of this section. Accelerated weathering procedures are not permitted	Outdoor exposure tests. Outdoor exposure tests of 3 years in duration are conducted on samples of all materials, including coated and uncoated versions, used for optical parts of devices covered by this standard. Tests are to be conducted in Florida and Arizona. Concentrations of polymer components and additives used in plastic materials may be changed without outdoor exposure testing provided the changes are within the limits of composition represented by higher and lower concentrations of these polymer components and additives previously tested to this section and found to meet its requirements.	Samples of materials are injection molded into polished metal molds to produce test specimens with two flat and parallel faces. Alternative techniques may be used to produce equivalent specimens. Test specimens shape may vary, but each exposed surface should contain a minimum uninterrupted area of 32 sq. cm. Samples are furnished in thicknesses of; 1.6± 0.25 mm., 2.3 ±0.25 mm., 3.2 ± 0.25 mm., and 6.4± 0.25 mm. All samples conform to the appropriate color test requirement of this standard prior to testing. A control sample of each thickness, kept properly protected from influences which may change its appearance and properties, is retained.	One sample of each thickness of each material is mounted at each exposure site so that at least a minimum uninterrupted area of 32 sq. cm. of the exposed upper surface of the sample is at an angle of 45° to the horizontal facing south. During the exposure time, the samples are cleaned once every three months by washing with mild soap or detergent and water, and then rinsing with distilled water. Rubbing is not permitted.	Plastic lenses, other than those incorporating reflex reflectors, used for inner lenses or those covered by another material and not exposed directly to sunlight must meet the optical material test requirements when covered by the outer lens or other material.	
				After completion of the outdoor exposure test, the haze and loss of surface luster as measured by ASTM 1003-92, *Haze and Luminous Transmittance of Transparent Plastic,* must not be greater than:	30% for materials used for outer lenses, other than those incorporating reflex reflectors.
					7% for materials used for reflex reflectors and lenses used in front of reflex reflectors.
					0% for materials used for headlamp lenses.
				After completion of the outdoor exposure test, materials, when compared with the unexposed control samples, must not show physical changes affecting performance such as color bleeding, delamination, crazing, or cracking. Materials used for reflex reflectors and lenses used in front of reflex reflectors must not show surface deterioration or dimensional changes.	
	Heat test.		Two samples of each thickness of each material are supported at the bottom, with at least 51 mm. of the sample above the support, in the vertical position in such a manner that, on each side, the minimum uninterrupted area of exposed surface is not less than 3225 sq. mm. The samples are placed in a circulating air oven at 79 ± 3° C for two hours.	After completion of the heat exposure and cooling to room ambient temperature, a test specimen must show no change in shape and general appearance discernable to the naked eye when compared with an unexposed specimen, and must continue to conform to the appropriate color test requirement of this standard.	

TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS			
APPLICABILITY	**TEST**	**PROCEDURE**	**PERFORMANCE REQUIREMENTS**
All integral beam, replaceable bulb, and combination headlamps, except those with glass lenses and motorcycle headlamps designed to the requirements of S13.	Abrasion test	A sample headlamp is mounted in the abrasion test fixture of Figure 5 with the lens facing upward. A new, unused abrading pad constructed of 0000 steel wool not less than 2.5±.1 cm. wide rubber cemented to a rigid base shaped to the same vertical contour of the lens is used for each test. The abrading pad support is equal in size to the pad and the center of the support surface is within ±2 mm. of parallel to the lens surface. The "grain" of the pad is oriented perpendicular to the direction of motion. The density of the pad is such that when the pad is resting unweighted on the lens, the base of the pad is no closer than 3.2 mm. to the lens at its closest point. When mounted on its support and resting on the lens of the test headlamp, the abrading pad is then weighted such that a pad pressure of 14±1 KPa. exists at the center and perpendicular to the face of the lens. The pad is cycled back and forth (1 cycle) for 11 cycles at 10±cm. per second over at least 80% of the lens surface, including all the area between the upper and lower aiming pads, but not including lens trim rings and edges. A pivot is used if it is required to follow the contour of the lens.	After completion of the abrasion test the sample headlamp must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.
All integral beam, replaceable bulb, and combination headlamps except those with a nonreplaceable glass lenses and motorcycle headlamps designed to the requirements of S13.	Chemical resistance test.	The entire exterior lens surface of the sample headlamp mounted in the headlamp test fixture and top surface of the lens-reflector joint is wiped once to the left and once to the right with a 6-inch square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 2 ounces of five different test fluids listed below. The lamp is wiped within 5 seconds after removal of the cloth from the test fluid. A new lamp sample may be used with each fluid. The test fluids are: (1) ASTM Reference Fuel C, which is composed of Isooctane 50% volume and Toluene 50% volume. Isooctane which conforms to A2.7 in Annex 2 of the Motor Fuels Section of the 1985 Annual Book of ASTM Standards, Vol. 05.04, and Toluene which conforms to ASTM specification D362-84, Standard Specification for Industrial Grade Toluene. ASTM Reference Fuel C is used as specified in: Paragraph A2.3.2 and A2.3.3 of Annex 2 to Motor Fuels, Section 1in the 1985 Annual Book of ASTM Standards; and OSHA Standard 29 CFR 1910.106--Handling Storage and Use of Flammable Combustible Liquids. (2) Tar remover (consisting by volume of 45% xylene and 55% petroleum base mineral spirits). (3) Power steering fluid (as specified by the vehicle manufacturer for use in the motor vehicle on which the headlamp is intended to be installed). (4) Windshield washer fluid consisting of 0.5% monoethanolamine with the remainder 50% concentration of methanol/distilled water by volume. (5) Antifreeze (50% concentration of ethylene glycol/distilled water by volume). After the headlamp sample has been wiped with the test fluid, it is stored in its designed operating attitude for 48 hours at a temperature of 23°C±4°C and a relative humidity of 30%±10%. At the end of the 48-hour period, the headlamp is wiped clean with a soft dry cotton cloth and visually inspected.	After completion of the chemical resistance test, the sample headlamp must have no surface deterioration, coating delamination, fractures, deterioration of bonding or sealing materials, color bleeding, or color pickup visible without magnification, and the headlamp must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.

TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS

APPLICABILITY	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
All headlamps, except motorcycle headlamps designed to the requirements of S13.	Corrosion test	A sample headlamp, mounted on a headlamp test fixture in designed operating position and including all accessory equipment necessary to operate in its normal manner, is subjected to a salt spray (fog) test in accordance with ASTMB117-73, Method of Salt Spray Testing, for 50 total hours, consisting of two periods of 24 hours exposure followed by a 1 hour drying period. If a portion of the device is completely protected in service, that portion is covered to prevent salt fog entry during exposure. After removal from the salt spray and the final 1 hour drying period, the sample headlamp is examined for corrosion that affects any other applicable tests contained in this Table. If such corrosion is found, the affected test(s) are performed on the corrosion sample and the results recorded.	After completion of the corrosion test, the sample headlamp must not have any observed corrosion which would result in the failure of any other applicable tests contained in this Table and no corrosion of the headlamp mounting and aiming mechanism that would result in the failure of the aiming adjustment tests, inward force test, or torque deflection test of this Table.
All integral beam, replaceable bulb, and combination headlamps except integral beams of sealed design verified by the Sealing test of this Table, and motorcycle headlamps designed to the requirements of S13.	Corrosion-connector test.	(a) A headlamp connector test is performed on each filament circuit of the sample headlamp prior to the test in subparagraph (b) according to Figure 4 and Table XXIII. The power source is set to provide 12.8 volts and the resistance is set to produce 10 amperes. (b) The headlamp with connector attached to the terminals, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, is subjected to a salt spray (fog) test in accordance with ASTM B117-73, Method of Salt Spray (Fog) Testing, for 240 hours, consisting of ten successive 24-hour periods. During each period, the headlamp is mounted in the middle of the chamber and exposed for 23 hours to the salt spray. The spray is not activated during the 24th hour. The bulb is removed from the headlamp and from the test chamber during the one hour of salt spray deactivation and reinserted for the start of the next test period, at the end of the first and last three 23-hour periods of salt spray exposure, and at the end of any two of the fourth through seventh 23-hour periods of salt-spray exposure. The test chamber is closed at all times except for a maximum of 2 minutes which is allowed for removal or replacement of a bulb during each period. After the ten periods, the lens reflector unit without the bulb is immersed in deionized water for 5 minutes, then secured and allowed to dry by natural convection only. (c) Using the voltage, resistance, and pretest set-up of paragraph (a), the current in each filament circuit is measured after the test conducted in paragraph (b).	After the completion of the corrosion-connector test, the sample headlamp must show no evidence of external or internal corrosion or rust visible without magnification. Loss of adhesion of any applied coating must not occur more than 3.2 mm from any sharp edge on the inside or out. Corrosion may occur on terminals only if the test current produced during test (c) is not less than 9.7 amperes.
All integral beam, replaceable bulb, and combination headlamps, except integral beams of sealed design verified by the Sealing test of this Table, and motorcycle headlamps designed to the requirements of S13.	Dust test.	A sample headlamp, mounted on a headlamp test fixture, with all drain holes, breathing devices or other designed openings in their normal operating positions, is positioned within a cubical box, with inside measurements of 900 mm. on each side or larger if required for adequate wall clearance (i.e., a distance of at least 150 mm between the headlamp and any wall of the box). The box contains 4.5 kg. of fine powdered cement which conforms to the ASTM C150-77 specification for Portland Cement. Every 15 minutes, the cement is agitated by compressed air or fan blower(s) by projecting blasts of air for a two-second period in a downward direction so that the cement is diffused as uniformly as possible throughout the entire box. This test is continued for five hours after which the exterior surfaces of the headlamp is wiped clean.	After completion of the dust test, the sample headlamp must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.

TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS				
APPLICABILITY	**TEST**	**PROCEDURE**		**PERFORMANCE REQUIREMENTS**
All integral beam, replaceable bulb, and combination headlamps, except and motorcycle headlamps designed to the requirements of S13. Headlamps with a glass lens and a non-plastic reflector need not meet the Internal heat test.	Temperature cycle test.	A sample headlamp with one or more replaceable light sources is tested according to the procedures of this section for a temperature cycle test and an internal heat test. Tests are made with all filaments lighted at design voltage that are intended to be used simultaneously in the headlamp and which in combination draw the highest total wattage. These include but are not limited to filaments used for turn signal lamps, fog lamps, parking lamps, and headlamp lower beams lighted with upper beams when the wiring harness is so connected on the vehicle. If a turn signal is included in the headlamp assembly, it is operated at 90 flashes a minute with a 75% ± 2% current "on time". If the lamp produces both the upper and lower beam, it is tested in both the upper beam mode and the lower beam mode under the conditions above described, except for a headlamp with a single type HB1 or type HB2 light source. The same sample headlamp is used in the temperature cycle test and then in the internal heat test.	A sample headlamp, mounted on a headlamp test fixture, is subjected to 10 complete consecutive cycles having the thermal cycle profile shown in Figure 6. During the hot cycle, the lamp is energized commencing at point "A" of Figure 6 and de-energized at point "B". Separate or single test chambers may be used to generate the environment of Figure 6. All drain holes, breathing devices or other openings or vents of the headlamps are set in their normal operating positions.	After completion of the temperature cycle test, the sample headlamp must show no evidence of delamination, fractures, entry of moisture, or deterioration of bonding material, color bleeding, warp or deformation visible without magnification, or lens warpage greater than 3 mm when measured parallel to the optical axis at the point of intersection of the axis of each light source with the exterior surface of the lens, and it must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.
	Internal heat test.	A sample headlamp lens surface that would normally be exposed to road dirt is uniformly sprayed with any appropriate mixture of dust and water or other materials to reduce the photometric output at the H-V test point of the upper beam (or the ½D-1½R test point of the lower beam as appropriate) to 25%±2% of the output originally measured in the appropriate photometric compliance test. A headlamp with a single type HB1 or type HB2 light source is tested on the upper beam only. Such reduction is determined under the same conditions as that of the original photometric measurement. After the photometric output of the lamp has been reduced as specified above, the sample lamp and its mounting hardware are mounted in an environmental chamber in a manner similar to that indicated in Figure 7 "Dirt/Ambient Test Setup". The headlamp is soaked for one hour at a temperature of 35° + 4° -0° C) and then the lamp is energized according to the procedure of this section for one hour in a still air condition, allowing the temperature to rise from the soak temperature. At the end of one hour the sample lamp is returned to a room ambient temperature of 23° + 4° -0° C and a relative humidity of 30%±10% and allowed to stabilize to the room ambient temperature. The lens is then cleaned.	After completion of the temperature cycle test and meeting its requirements, and completion of the internal heat test, the sample headlamp must have no lens warpage greater than 3 mm when measured parallel to the optical axis at the point of intersection of the axis of each light source with the exterior surface of the lens, and it must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.

TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS

APPLICABILITY	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
All integral beam, replaceable bulb, and combination headlamps, except integral beams of sealed design verified by the Sealing test of this Table, and motorcycle headlamps designed to the requirements of S13.	Humidity test.	The test fixture consists of a horizontal steel plate to which three threaded steel or aluminum rods of ½ inch diameter are screwed vertically behind the headlamp. The sample headlamp assembly is clamped to the vertical rods, which are behind the headlamp. All attachments to the headlamp assembly are made behind the lens and vents or openings, and are not within 2 inches laterally of a vent inlet or outlet. (b) The mounted headlamp assembly is oriented in its design operating position, and is placed in a controlled environment at a temperature of 100°+7°/-0° F (38°+4°/-0° C) with a relative humidity of not less than 90%. All drain holes, breathing devices, and other openings are set in their normal operation positions for all phases of the humidity test. The headlamp is subjected to 24 consecutive 3-hour test cycles. In each cycle, the headlamp is energized for 1 hour at design voltage with the highest combination of filament wattages that are intended to be used, and then de-energized for 2 hours. If the headlamp incorporates a turn signal then the turn signal flashes at a rate of 90 flashes per minute with a 75%±2% current "on-time". (c) Within 3 minutes after the completion of the 24th cycle, the air flow test will begin. The following procedure is to occur: the mounted assembly is removed, placed in an insulating box and covered with foam material so that there is no visible air space around the assembly; the box is closed, taken to the air flow test chamber, and placed within it. Inside the chamber, the assembly with respect to the air flow, is to be oriented in its design operating position. The assembly is positioned in the chamber so that the center of the lens is in the center of the opening of the air flow entry duct during the test. The headlamp has at least 3 inches clearance on all sides, and at least 4 inches to the entry and exit ducts at the closest points. If vent tubes are used which extend below the lamp body, the 3 inches are measured from the bottom of the vent tube or its protection. The temperature of the chamber is 73°+7°/-0° F (23°+4°/-0° C) with a relative humidity of 30% + 10% / - 0%. The headlamp is not energized. (d) Before the test specified in paragraph (e) of this section, the uniformity of the air flow in the empty test chamber at a plane 4 inches downstream of the air entry duct is measured over a 4-inch square grid. The uniformity of air flow at each grid point is 10% of the average air flow specified in paragraph (e) of this section. (e) The mounted assembly in the chamber is exposed, for one hour, to an average air flow of 330+0-30 ft/min. as measured with an air velocity measuring probe having an accuracy of ±3% in the 330 ft/min range. The average air flow is the average of the velocity recorded at six points around the perimeter of the lens. The six points are determined as follows: At the center of the lens, construct a horizontal plane. The first two points are located in the plane, 1 inch outward from the intersection of the plane and each edge of the lens. Then, trisect the distance between these two points and construct longitudinal vertical planes at the two intermediate locations formed by the trisection. The four remaining points are located in the vertical planes, one inch above the top edge of the lens, and one inch below the bottom edge of the lens. (f) After one hour, the headlamp is removed and inspected for moisture.	After completion of the humidity test, the sample headlamp must show no evidence of interior delamination or moisture, fogging or condensation visible without magnification, and it must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.

TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS			
APPLICABILITY	**TEST**	**PROCEDURE**	**PERFORMANCE REQUIREMENTS**
All headlamps except motorcycle headlamps designed to the requirements of S13.	Vibration test.	The sample headlamp, as mounted on the support supplied, is bolted to the anvil end of the table of the vibration test machine of SAE J577, *Vibration Test Machine,* April 1964, and vibrated 750 cpm through a distance of 1/8 in. The table is spring mounted at one end and fitted with steel calks on the underside of the other end. The table is of sufficient size to completely contain the test fixture base with no overhang. The calks are to make contact with the steel anvil once during each cycle at the completion of the fall. The rack is operated under a spring tension of 60 to 70 lb. The vibration is applied in the vertical axis of the headlamp as mounted on the vehicle. Bulb filaments are not energized during the test. The test is continued for 1 hour.	After completion of the vibration test, there must be no evidence of loose or broken parts, other than filaments, visible without magnification.
Integral beam except motorcycle headlamps designed to the requirements of S13. (Optional)	Sealing test.	An unfixtured sample headlamp in its design mounting position is placed in water at a temperature of 176°± 5° F (60°± 3° C) for one hour. The headlamp is energized in its highest wattage mode, with the test voltage at 12.8±0.1 V. during immersion. The lamp is then de-energized and immediately submerged in its design mounting position into water at 32° +5°/ -0° F (0° +3°/ -0° C). The water is in a pressurized vessel, and the pressure is increased to 10 psi (70 kPa), upon placing the lamp in the water. The lamp remains in the pressurized vessel for a period of thirty minutes. This entire procedure is repeated for four cycles. Then the lamp is inspected for any signs of water on its interior. During the high temperature portion of the cycles, the lamp is observed for signs of air escaping from its interior.	After completion of the sealing test, a sample headlamp confirmed to be sealed need not meet the corrosion test, dust test, or humidity test of this Table. If any water occurs on the interior or air escapes, the lamp is not a sealed lamp.
Replaceable bulb headlamps incorporating replaceable lens, except motorcycle headlamps designed to the requirements of S13.	Chemical resistance of reflectors of replaceable lens headlamps.	With a sample headlamp in the headlamp test fixture and the lens removed, the entire surface of the reflector that receives light from a headlamp light source is wiped once to the left and once to the right with a 6-inch square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 2 ounces of one of the test fluids listed in paragraph (b). The lamp is wiped within 5 seconds after removal of the cloth from the test fluid. (b) The test fluids are: (1) Tar remover (consisting by volume of 45% xylene and 55% petroleum base mineral spirits); (2) Mineral spirits; or (3) Fluids other than water contained in the manufacturer's instructions for cleaning the reflector. (c) After the headlamp has been wiped with the test fluid, it is stored in its designed operating attitude for 48 hours at a temperature of 73°±7° F (23°±4° C) and a relative humidity of 30%±10%. At the end of the 48-hour period, the headlamp is wiped clean with a soft dry cotton cloth and visually inspected.	After completion of the chemical resistance test, the sample headlamp must have no surface deterioration, coating delamination, fractures, deterioration of bonding or sealing materials, color bleeding or color pickup visible without magnification, and the headlamp must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.

TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS			
APPLICABILITY	**TEST**	**PROCEDURE**	**PERFORMANCE REQUIREMENTS**
Replaceable bulb headlamps incorporating replaceable lens, except motorcycle headlamps designed to the requirements of S13.	Corrosion resistance of reflectors of replaceable lens headlamps.	A sample headlamp with the lens removed, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, is subjected to a salt spray (fog) test in accordance with ASTM B117-73, Method of Salt Spray (Fog) Testing, for 24 hours, while mounted in the middle of the chamber. Afterward, the headlamp is stored in its designed operating attitude for 48 hours at a temperature of 73° ± 7°F (23° ±4°C) and a relative humidity of 30% ± 10% and allowed to dry by natural convection only. At the end of the 48-hour period, the reflector is cleaned according to the instructions supplied with the headlamp manufacturer's replacement lens, and inspected. The lens and seal are then attached according to these instructions and the headlamp tested for photometric performance.	After the completion of the corrosion test, the sample headlamp must show no evidence of corrosion or rust visible without magnification on any part of the headlamp reflector that receives light from a headlamp light source, on any metal light or heat shield assembly, or on a metal reflector of any other lamp. The sample headlamp with the replacement lens installed must meet the requirements of the appropriate photometry tests of Table XIX and Table XVIII. A ¼° reaim is permitted in any direction at any test point.
All headlamps, except motorcycle headlamps designed to the requirements of S13.	Inward force test	A sample headlamp mechanism, including the aiming adjusters, is subjected to an inward force of 222 N directed normal to the headlamp aiming plane and symmetrically about the center of the headlamp lens face.	After the completion of the inward force test, a sample headlamp must not permanently recede by more than 2.5 mm. The aim of the headlamp must not permanently deviate by more than 3.2 mm at a distance of 7.6 m. Any headlamp that is capable of being mechanically aimed by externally applied aiming devices must not change by more than 0.30°.

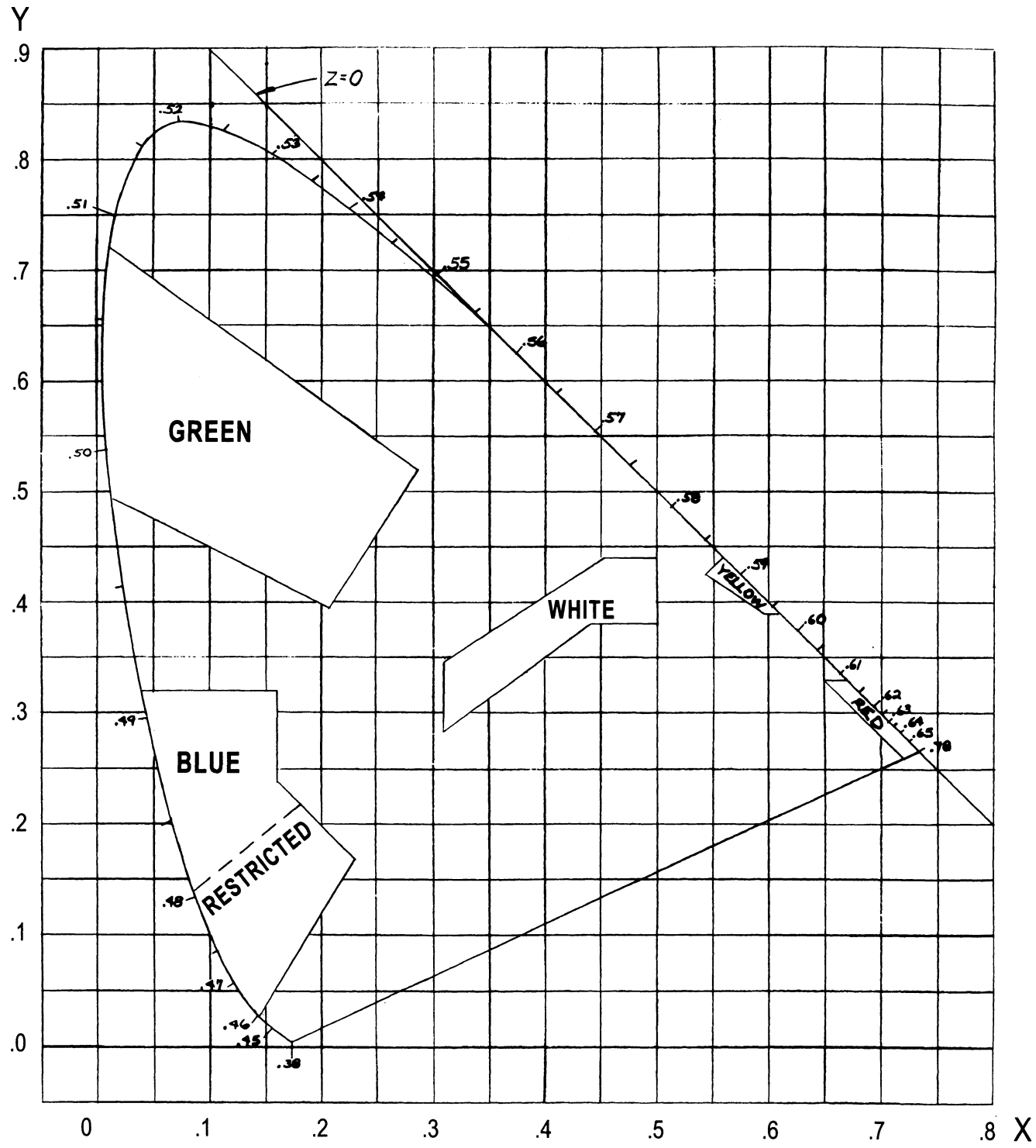
TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS

APPLICABILITY	TEST	PROCEDURE	PERFORMANCE REQUIREMENTS
All sealed beam headlamps and all integral beam, replaceable bulb, and combination headlamps capable of being mechanically aimed by externally applied headlamp aiming devices specified in SAE J602 OCT80, *Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units.*	Torque deflection test	The sample headlamp assembly is mounted in designed vehicle position and set at nominal aim (H=0, V=0). A sealed beam headlamp, except Type G and Type H, is removed from its mounting and replaced by the appropriate deflectometer. (Type C and Type D-Figure 18, Type A and Type E-Figure 16, Type B-Figure 17, and Type F-Figure 14). Sealed beam headlamps Type G and Type H have the adapter of Figure 15 and the deflectometer of Figure 14 attached to the headlamp. A torque of 2.25 Nm is applied to the headlamp assembly through the deflectometer and a reading on the thumbwheel is taken. The torque is removed and a second reading on the thumbwheel is taken. Headlamps other than sealed beam headlamps have the downward force used to create the torque applied parallel to the aiming reference plane, through the aiming pads, and displaced forward using a lever arm such that the force is applied on an axis that is perpendicular to the aiming reference plane and originates at the center of the aiming pad pattern (see Figure 3). For headlamps using the aiming pad locations of Group I, the distance between the point of application of force and the aiming reference plane is not less than 168.3 mm plus the distance from the aiming reference plane to the secondary plane, if used. For headlamps using the aiming pad locations of Group II, the distance between the point of application of force and the aiming reference plane is not less than 167.9 mm plus the distance to the secondary plane, if used. For headlamps using the nonadjustable Headlamp Aiming Device Locating Plates for the 146 mm diameter, the 176 mm diameter, and the 92x150 mm sealed beam, the distance between the point of application of force and the aiming plane is not, respectively, less than 177.4 mm, 176.2 mm, and 193.7 mm.	The aim of each sample headlamp must not deviate more than 0.30° when the downward torque is removed.
Sealed beam headlamp Types A, B, C, D, E, and F.	Retaining ring test	A sample headlamp with the minimum flange thickness of: Type A-31.5 mm, Type B-10.1 mm, Type C-11.8 mm, Type D-11.8 mm, Type E-31.5 mm, and Type F-8.6 mm., is secured between the appropriate mounting ring and retaining ring (mounting ring and aiming ring for Type F)	The sample headlamp when secured per the procedure must be held tight enough that it will not rattle.
All headlamps except motorcycle headlamps designed to the requirements of S13.	Headlamp connector test	A sample headlamp connected into the test circuit of Figure 4 has the power supply adjusted until 10 amperes DC are flowing through the circuit. The test is repeated for each filament circuit of the headlamp.	The voltage drop, as measured in the test circuit of Figure 4, must not exceed 40 mv DC in any applicable filament circuit of the sample headlamp.
Sealed beam headlamp Types A, B, C, D, E, F, G, and H.	Headlamp wattage test	A sample headlamp that has been seasoned is energized so as to have 12.8 v±20 mv DC applied across each filament circuit and the current flowing in each circuit is measured.	The wattage of each filament circuit of the sample headlamp must not exceed the appropriate value for that type of headlamp as shown in Table II.

TABLE XXIII: HEADLAMP PHYSICAL TEST REQUIREMENTS			
APPLICABILITY	**TEST**	**PROCEDURE**	**PERFORMANCE REQUIREMENTS**
All headlamps, except motorcycle headlamps designed to the requirements of S13.	Aiming adjustment test (Laboratory)	A sample headlamp is mounted in design position at nominal (H=0, V=0) aim with an accurate measuring device such as a spot projector or other equally accurate means attached. The headlamp is adjusted to the extremes of travel in each horizontal and vertical direction.	A sample sealed beam headlamp, other than a Type F, tested per the procedure must provide a minimum of ±4.0° adjustment range in both the vertical and horizontal planes and, if equipped with independent vertical and horizontal aiming screws, the adjustment must be such that neither the vertical nor horizontal aim must deviate more than 100 mm from horizontal or vertical planes, respectively, at a distance of 7.6 m through an angle of ±4.0°. A sample Type F sealed beam, integral beam, replaceable bulb, or combination headlamp tested per the procedure must provide a minimum of ±4.0° adjustment range in the vertical plane and ±2.5° in the horizontal plane and if equipped with independent vertical and horizontal aiming screws, the adjustment must be such that neither the vertical nor horizontal aim must deviate more than 100 mm from horizontal or vertical planes, respectively, at a distance of 7.6 m through an angle of ±2.5° and ±4.0° respectively. A sample headlamp that is aimed by moving the reflector relative to the lens and headlamp housing, and vice-versa must provide a minimum adjustment range in the vertical plane not less than the full range of the pitch on the vehicle on which it is installed and ± 2.5° in the horizontal plane. Visually aimed lower beam headlamps without a VHAD are required not to have a horizontal adjustment mechanism and horizontal aim range requirements do not apply.
All headlamps except motorcycle headlamps designed to the requirements of S13.	Aiming adjustment test (On vehicle)	A sample headlamp is mounted on the vehicle at nominal (H=0, V=0) aim with an accurate measuring device such as a spot projector or other equally accurate means attached. The installed range of static pitch angle is, at a minimum, determined from unloaded vehicle weight to gross vehicle weight rating, and incorporates pitch angle effects from maximum trailer or trunk loadings, the full range of tire intermix sizes and suspensions recommended and/or installed by the vehicle manufacturer, and the anticipated effects of variable passenger loading. The headlamp is adjusted to the extremes of travel in each horizontal and vertical direction	A sample headlamp tested per the procedure must provide a minimum vertical adjustment range not less than the full range of pitch of the vehicle on which it is installed. The vertical aim mechanism must be continuously variable over the full range. The adjustment of one aim axis through its full on-vehicle range must not cause the aim of the other axis to deviate more than ±0.76°. If this performance is not achievable, the requirements of S14.4.1 apply, except that if the aiming mechanism is not a VHAD, the requirements specific to VHADs are not applicable, and the instruction must be specific to the aiming mechanism installed.

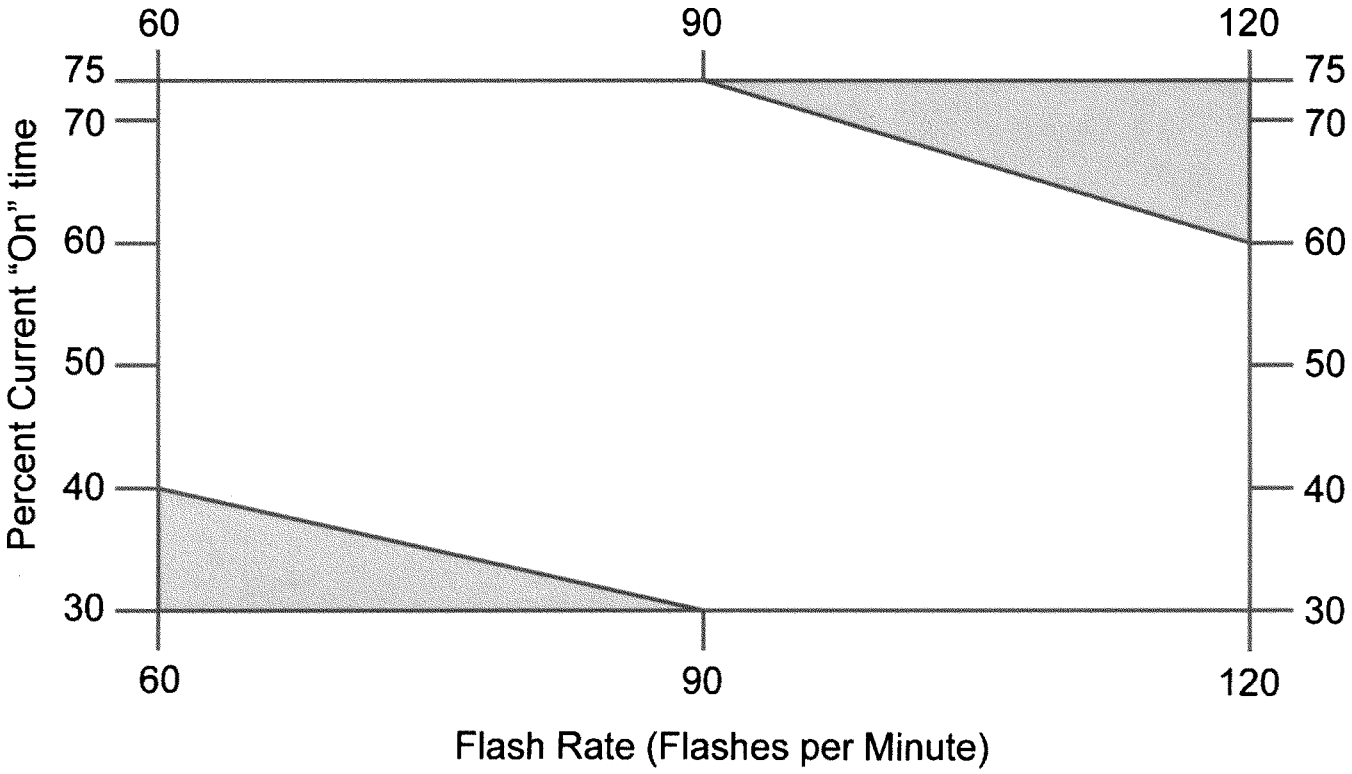
TABLE XXIII: REPLACEABLE LIGHT SOURCE PHYSICAL TEST REQUIREMENTS			
APPLICABILITY	**TEST**	**PROCEDURE**	**PERFORMANCE REQUIREMENTS**
All replaceable light sources.	Deflection test for replaceable light sources.	With the sample light source rigidly mounted in a fixture in a manner indicated in Figure 8, a force 4.0±0.1 pounds (17.8±0.4N) is applied at a distance "A" from the reference plane perpendicular to the longitudinal axis of the glass capsule and parallel to the smallest dimension of the pressed glass capsule seal. The force is applied (using a rod with a hard rubber tip with a minimum spherical radius of .039 in (1 mm)) radially to the surface of the glass capsule in four locations in a plane parallel to the reference plane and spaced at a distance "A" from that plane. These force applications are spaced 90° apart starting at the point perpendicular to the smallest dimension of the pressed seal of the glass capsule. The bulb deflection is measured at the glass capsule surface at 180° opposite to the force application. Distance "A" for a replaceable light source other than an HB Type is the dimension provided in accordance with Appendix A of part 564 of this chapter, section I.A.1 if the light source has a lower beam filament, or as specified in section I.B.1 if the light source has only an upper beam filament.	After completion of the deflection test, a sample light source must have no permanent deflection of the glass envelope exceeding 0.13 mm in the direction of applied force.
All replaceable light sources	Pressure test for replaceable light sources.	The capsule, lead wires and/or terminals, and seal on each sample Type HB1, Type HB3, Type HB4, and Type HB5 light source, and on any other replaceable light source which uses a seal, is installed in a pressure chamber as shown in Figure 10 so as to provide an airtight seal. The diameter of the aperture in Figure 10 on a replaceable light source (other than a HB Type) must be that dimension furnished for such light source in compliance with Appendix A or Appendix B of 49 CFR Part 564. The light source is immersed in water for one minute while inserted in a cylindrical aperture specified for the light source, and subjected to an air pressure of 70KPa (10psig) on the glass capsule side.	After completion of the pressure test, the sample light source with an airtight seal on the low pressure (connector side) must show no evidence of air bubbles on that side.

TABLE XXIII: VEHICLE HEADLAMP AIMING DEVICE (VHAD) PHYSICAL TEST REQUIREMENTS			
TEST	**PROCEDURE**		**PERFORMANCE REQUIREMENTS**
Scale graduation test	The same VHAD and associated headlamp(s) or headlamp assembly are rigidly mounted in a headlamp test fixture with the aiming plane horizontal and vertical and with the scale on the device set at 0.	Check each graduation on the horizontal and vertical aim scales.	Scale graduation from correct aim must not exceed ±0.2° horizontally and ±0.1° vertically.
Cold scale graduation test		The VHAD and an unlighted headlamp assembly are then stabilized at -7° ± 3°C in a circulating air environmental test chamber.	After completion of a 30 minute temperature soak the variation from correct aim shown by the sample VHAD must not exceed ±0.2° horizontally and ±0.1° vertically.
Hot scale graduation test		The VHAD and the headlamp assembly with its highest wattage filament, or combination of filaments intended to be used simultaneously, energized at its design voltage, is then stabilized at 38°±3°C in a circulating air environmental test chamber.	After completion of a 30 minute temperature soak the variation from correct aim shown by the sample VHAD must not exceed ±0.2° horizontally and ±0.1° vertically.
Thermal cycle test		The VHAD and an unlighted headlamp assembly are then placed in a circulating air environmental test chamber and exposed to a temperature of 60° ± 3°C for 24 hours, followed by a temperature of -40° ± 3°C for 24 hours, and are then permitted to return to room temperature.	After completion of the thermal cycle test the variation from correct aim shown by the sample VHAD must not exceed ±0.2° horizontally and ±0.1° vertically and the VHAD and headlamp assembly must show no damage which would impair its ability to perform as specified in this standard.
Corrosion test		The VHAD and headlamp assembly are then tested according to the headlamp corrosion test of this Table.	After completion of the corrosion test, the sample VHAD and headlamp must not have any observed corrosion that would result in the failure of any other applicable tests contained in this Table.
Photometry test		The VHAD and headlamp assembly are then tested for photometric compliance according to the procedure of S6.8.5.6 and for replacement units per S14.9.4.	The sample headlamp must comply with the appropriate photometric requirements of Table XIX and Table XVIII and with replacement units installed per S14.9.4.



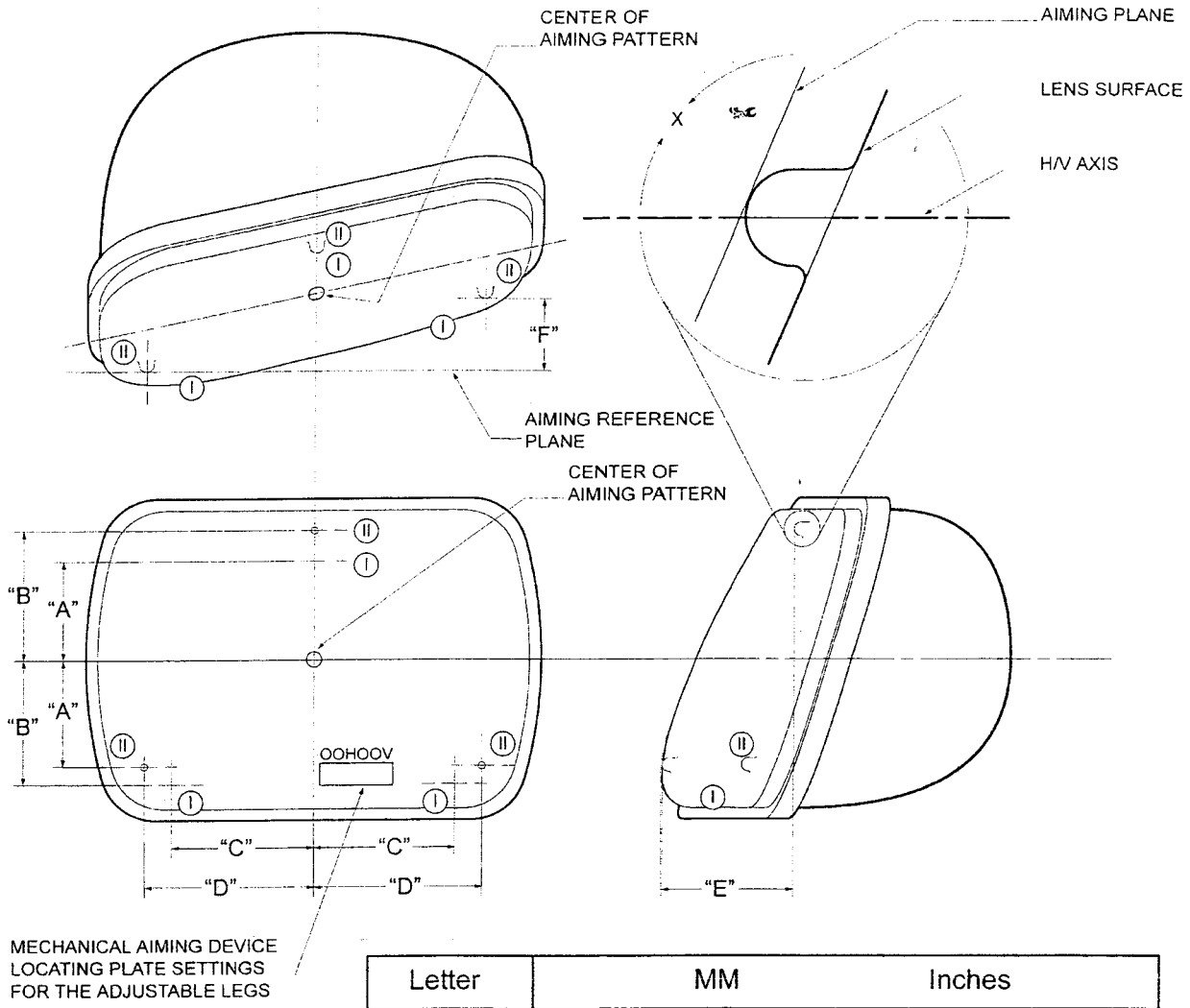
CHROMATICITY DIAGRAM

FIGURE 1



FLASHER PERFORMANCE CHART

FIGURE 2



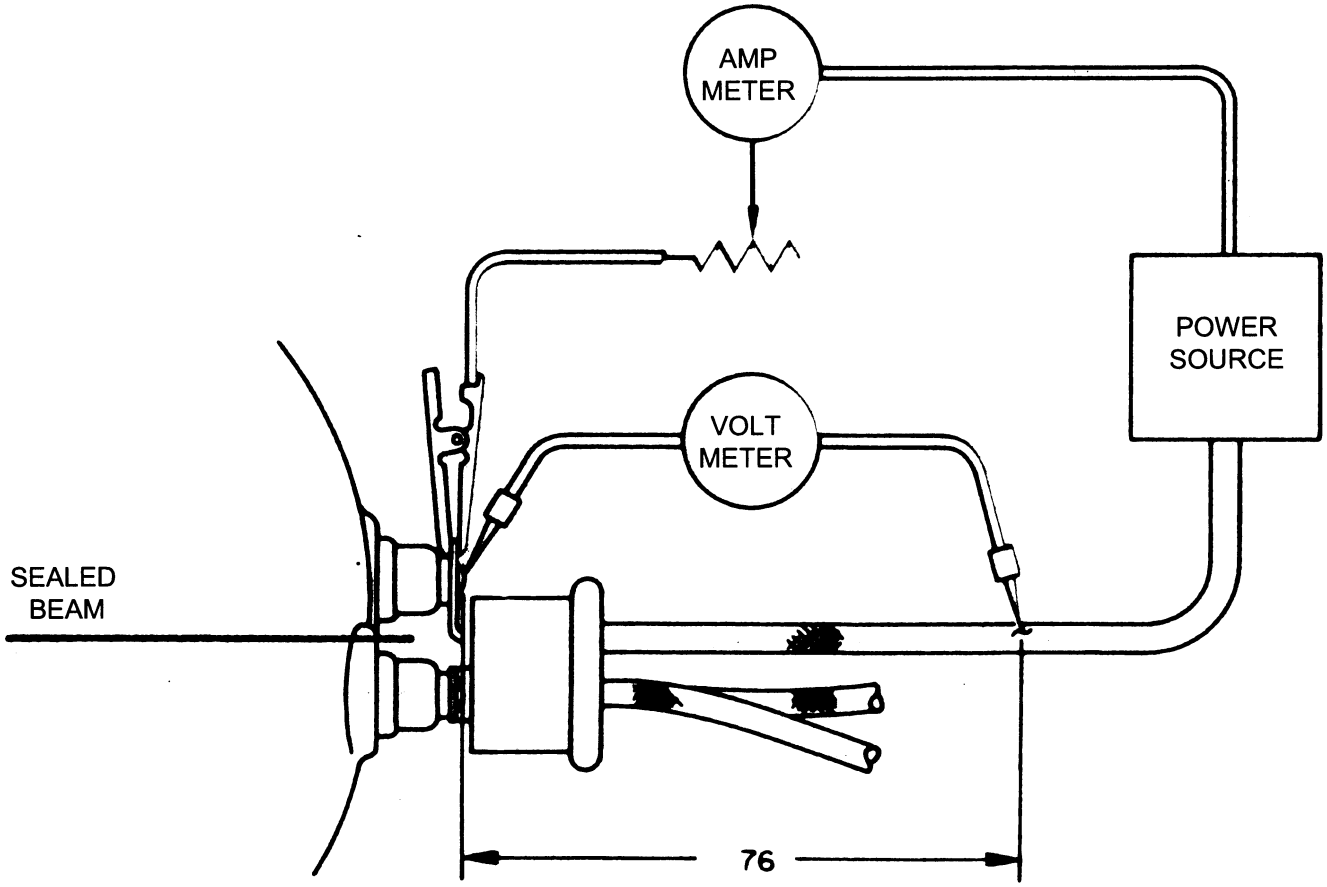
Notes:
Group I or Group II aiming pad locations may be used

Group I aiming pad location (front view) is that prescribed for 2B1 sealed beam units

Group II aiming pad location (front view) is that prescribed for 1A1/2A1 sealed beam units

Letter	MM	Inches
A	42.16 ± 0.25	1.660 ± 0.010
B	60.05 ± 1.00	2.364 ± 0.039
C	64.0 ± 1.00	2.520 ± 0.039
D	68.58 ± 0.51	2.700 ± 0.020
E	Mechanical aiming device locating plate setting for the vertical adjustable leg. (Millimeters)	
F	Mechanical aiming device locating plate setting for the horizontal adjustable leg. (Millimeters)	

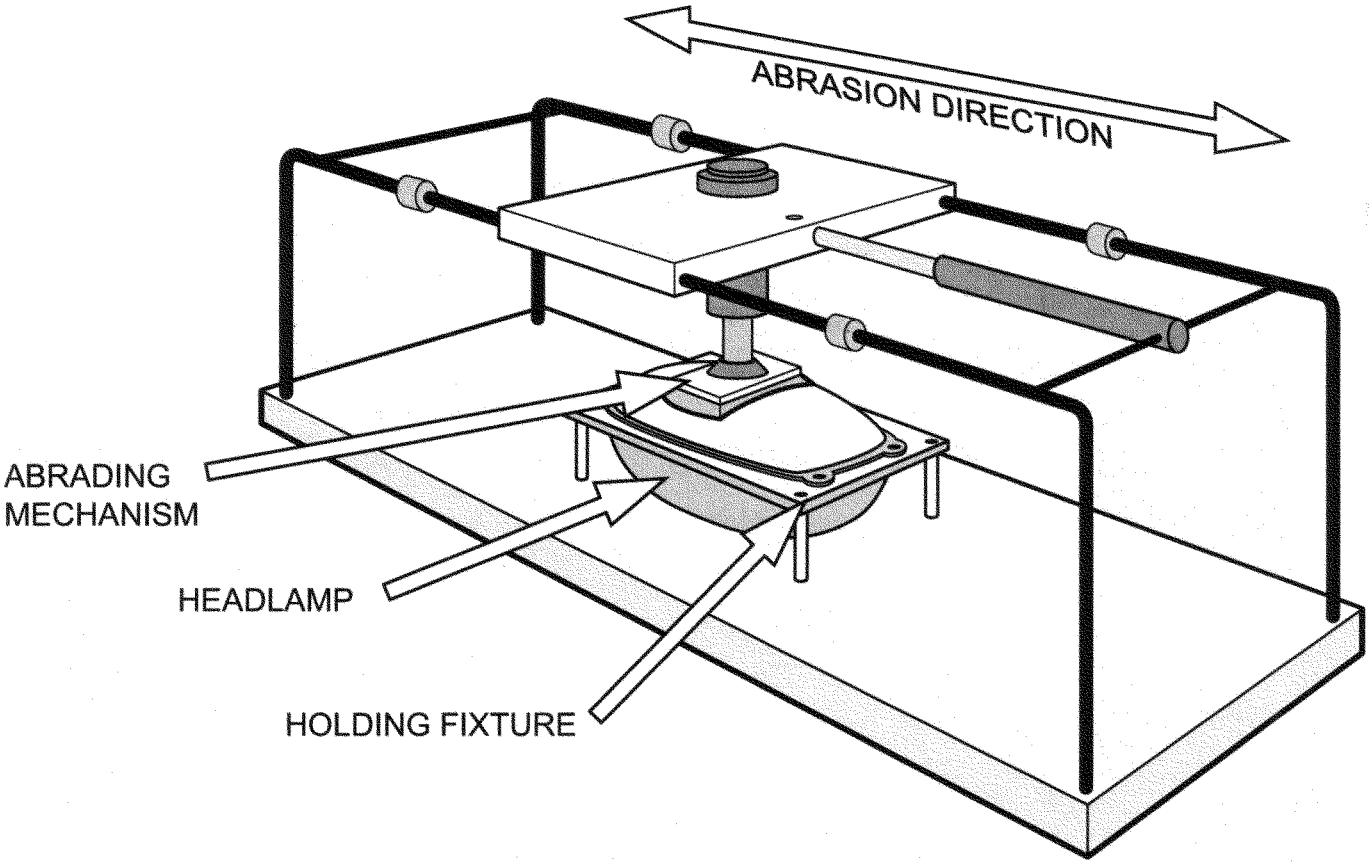
FIGURE 3



NOTE: DIMENSIONS ARE IN mm

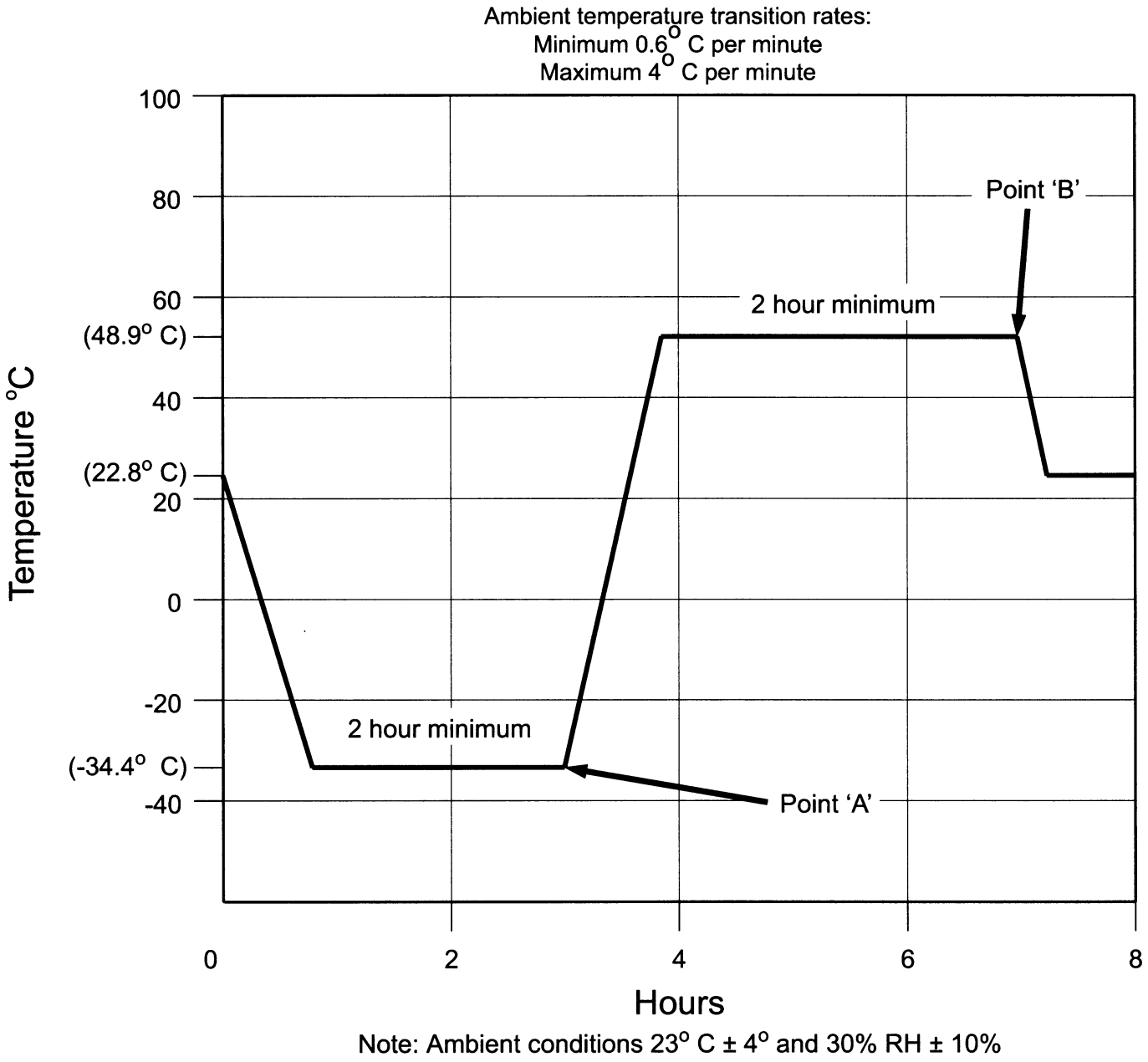
HEADLAMP CONNECTOR TEST SETUP

FIGURE 4



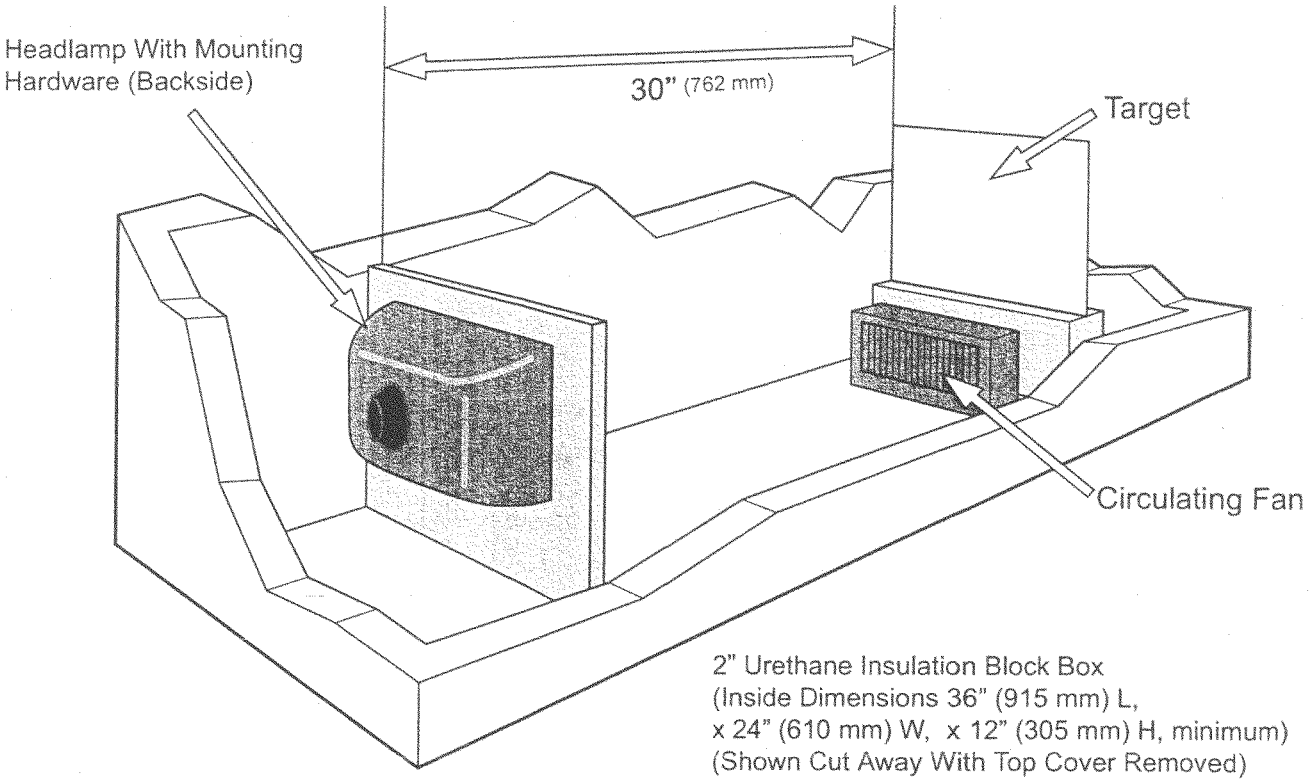
HEADLAMP ABRASION TEST FIXTURE

FIGURE 5



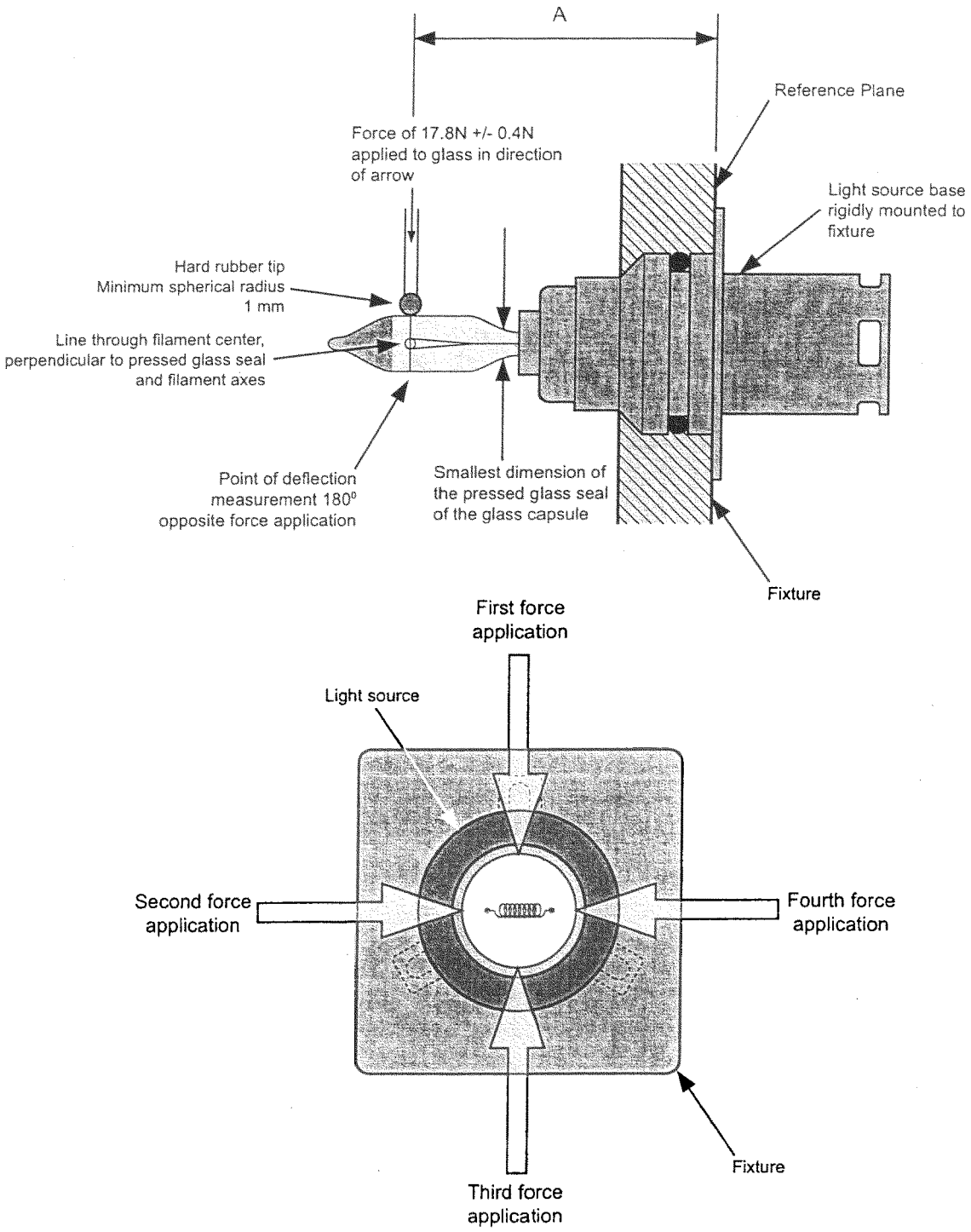
THERMAL CYCLE TEST PROFILE

FIGURE 6



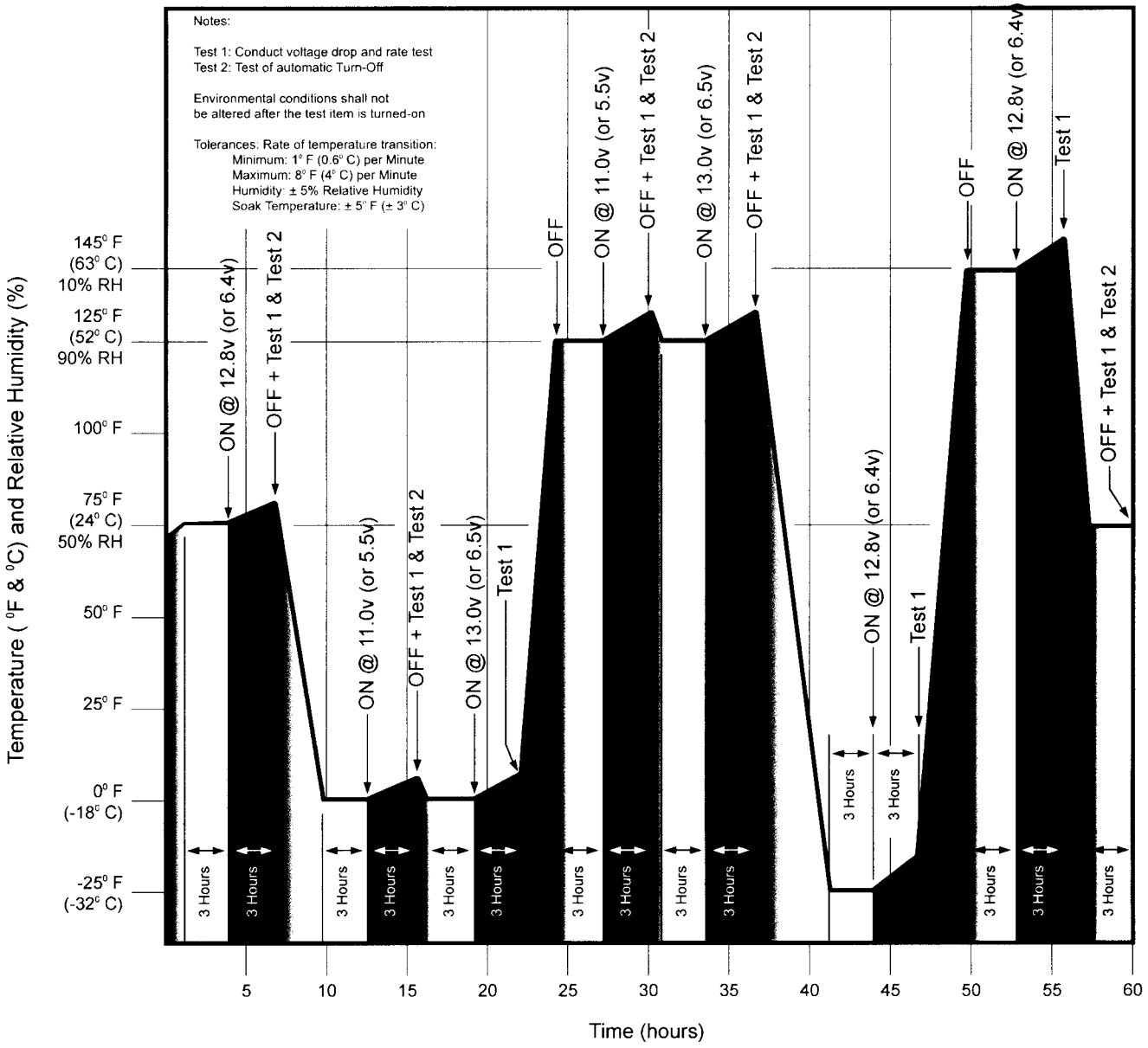
DIRT / AMBIENT TEST SETUP

FIGURE 7



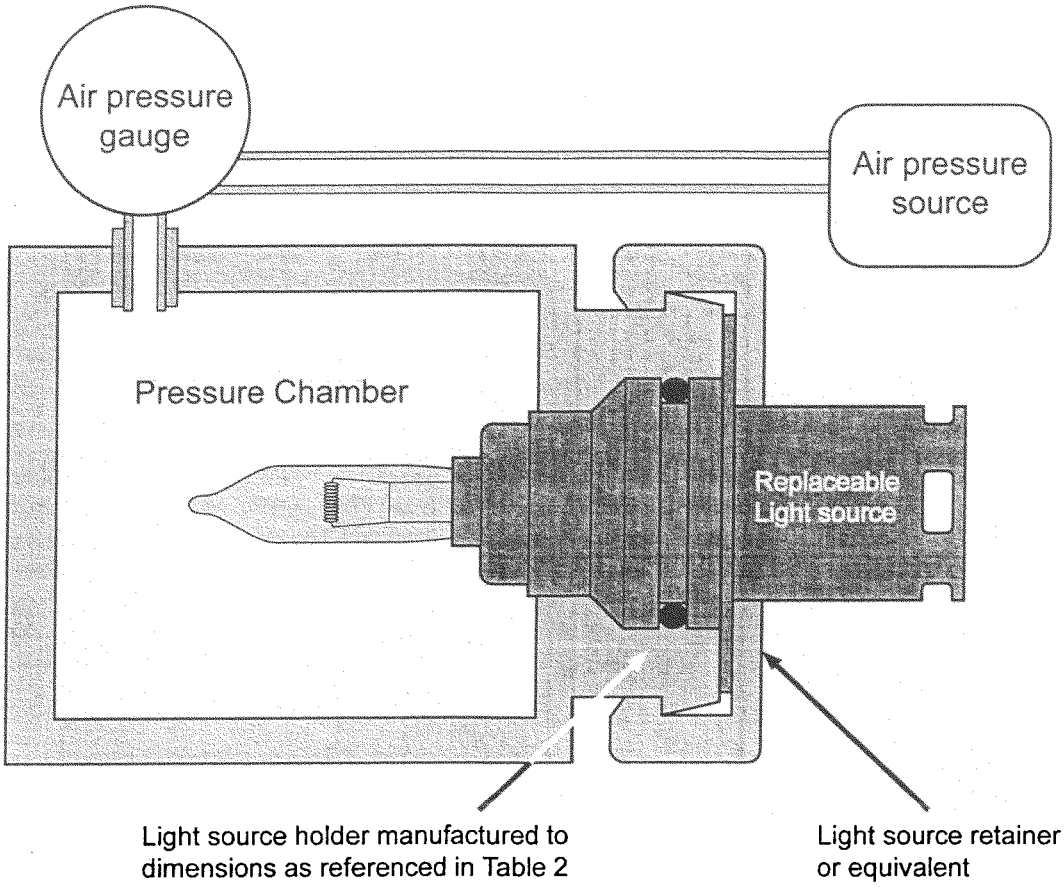
REPLACEABLE BULB DEFLECTION TEST SETUP

FIGURE 8



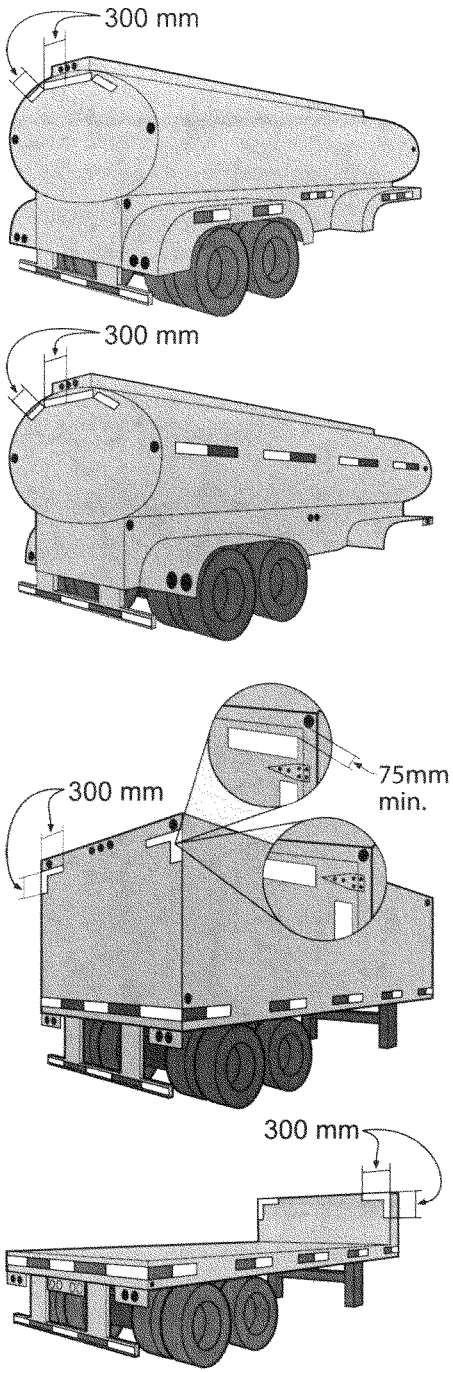
ENVIRONMENTAL TEST PROFILE

FIGURE 9



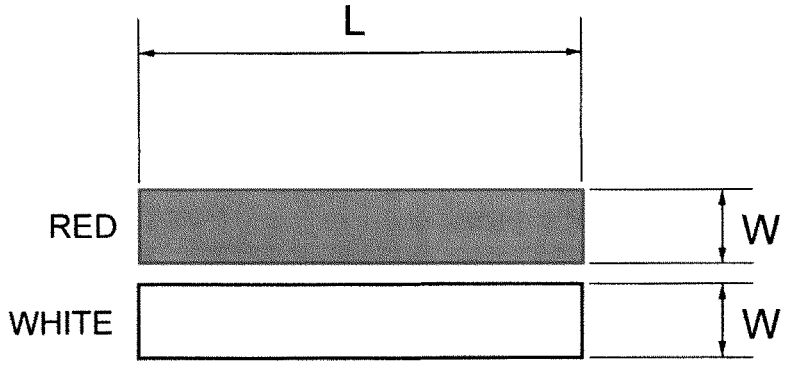
HEADLAMP REPLACEABLE BULB PRESSURE TEST SETUP

FIGURE 10

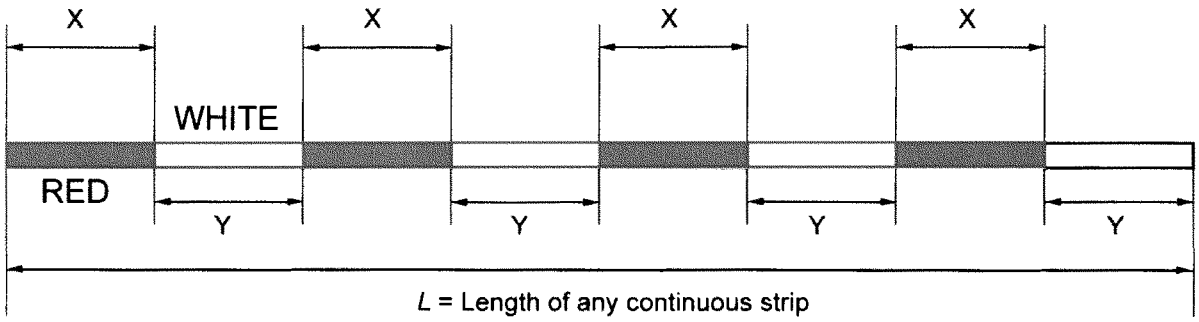


TRAILER CONSPICUITY
TREATMENT EXAMPLES

FIGURE 11



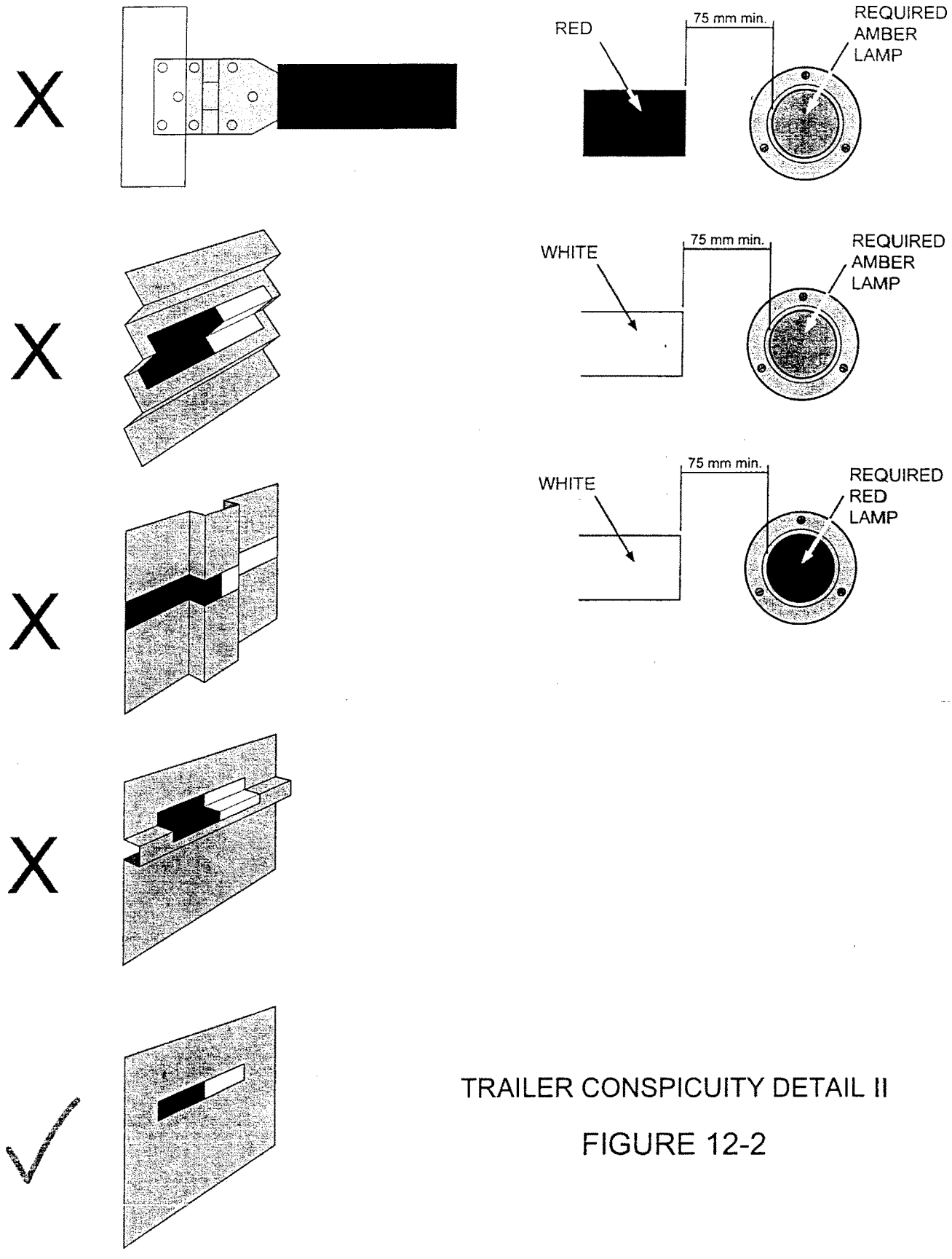
Grade DOT-C2 = 300 mm (±150 mm) L x 50 mm W Minimum
Grade DOT-C3 = 300 mm (±150 mm) L x 75 mm W Minimum
Grade DOT-C4 = 300 mm (±150 mm) L x 100 mm W Minimum



X + X + ... < 2/3 *L* and Y + Y + ... < 2/3 *L*

TRAILER CONSPICUITY DETAIL I

FIGURE 12-1



TRAILER CONSPICUITY DETAIL II

FIGURE 12-2

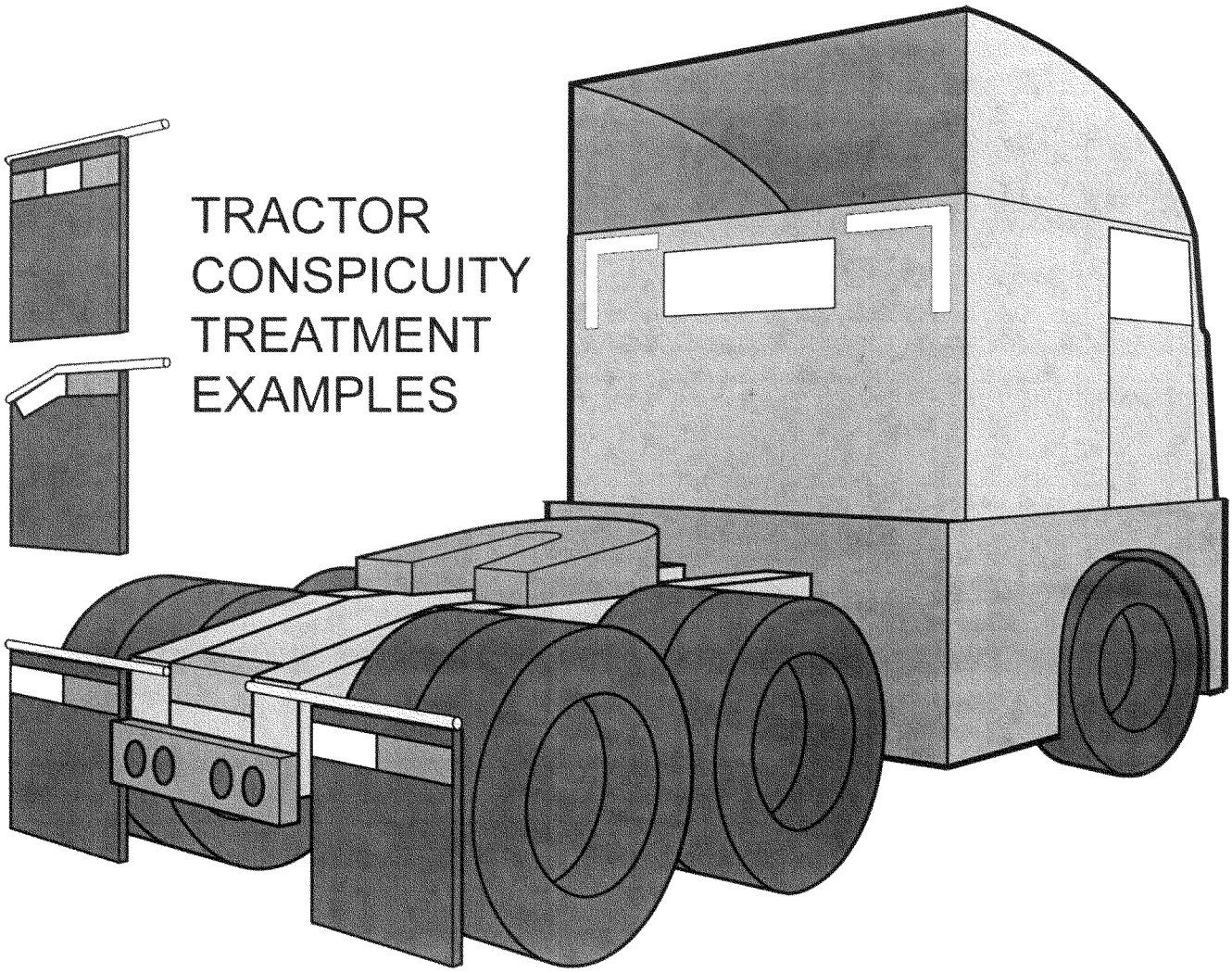
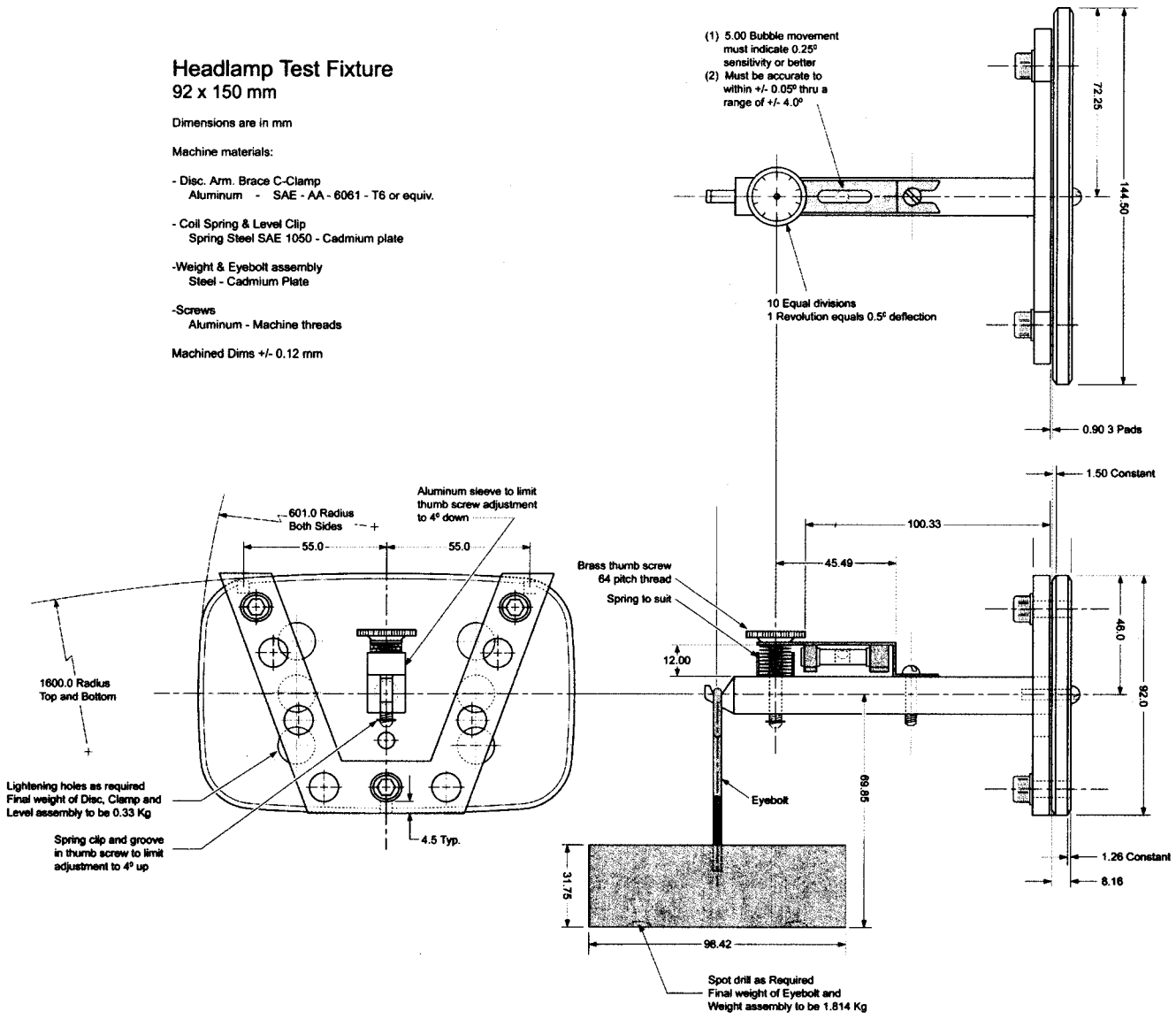
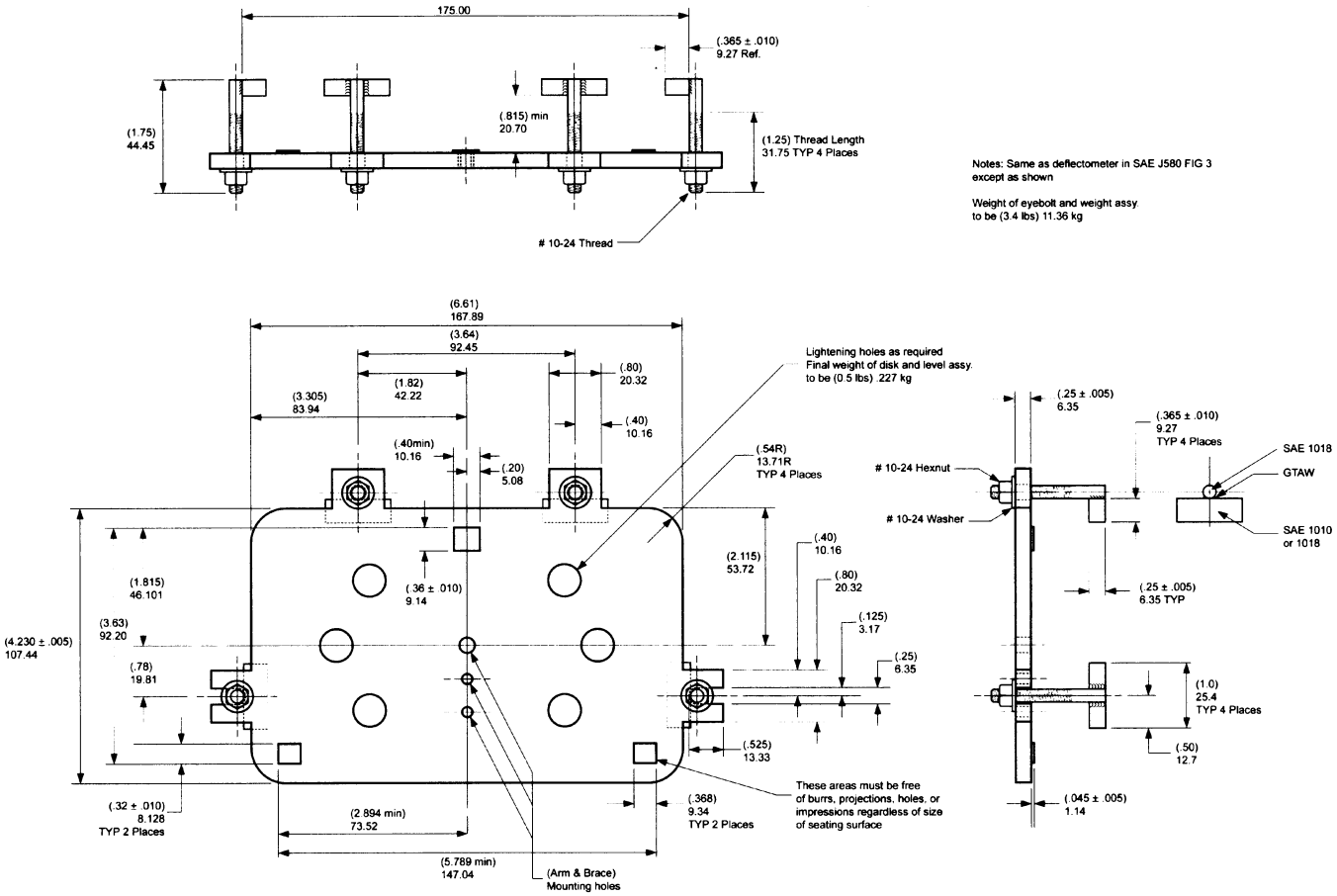


FIGURE 13



92 x 150 mm HEADLAMP AIM DEFLECTION TEST SETUP

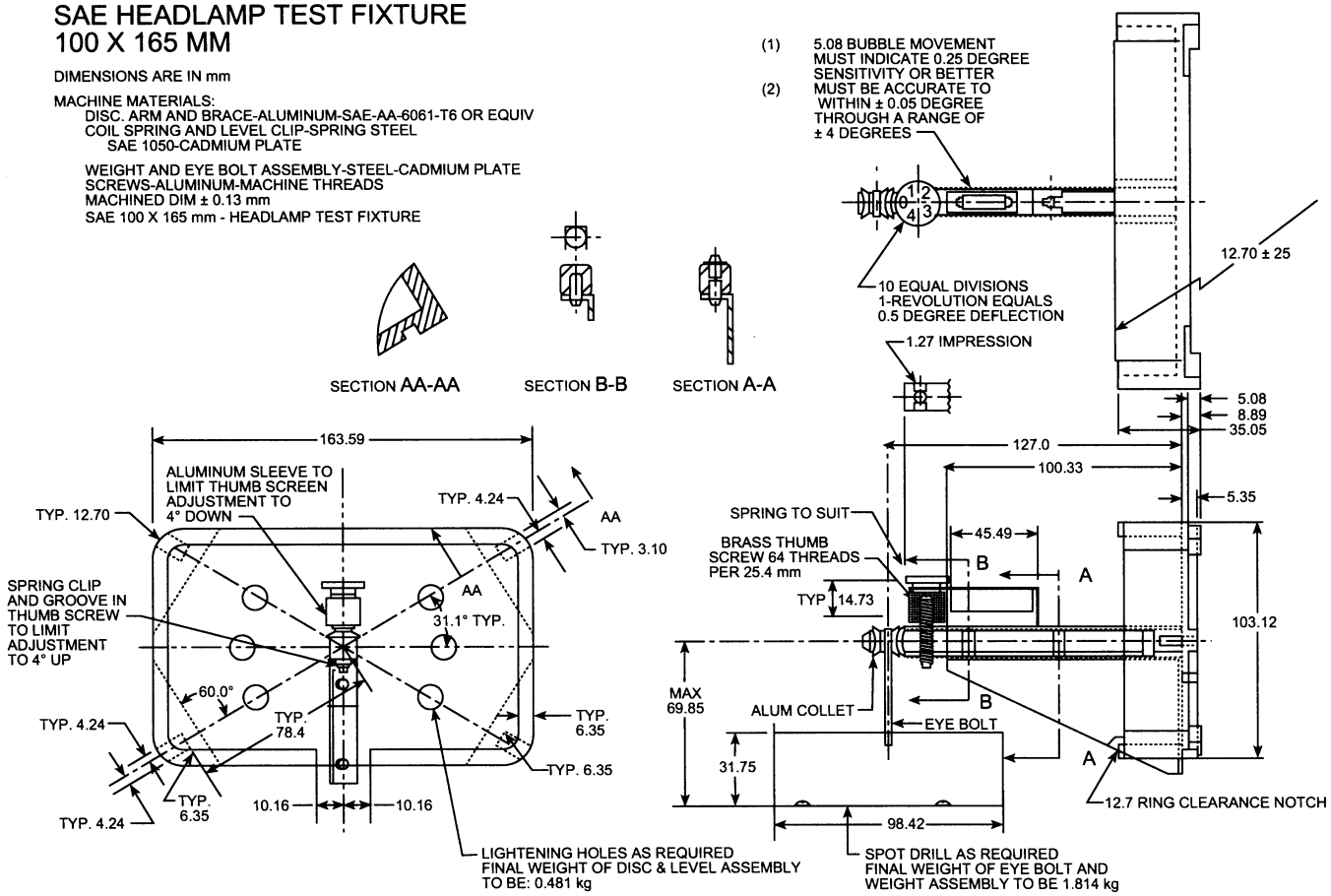
FIGURE 14



Dimensions are in (inches) mm

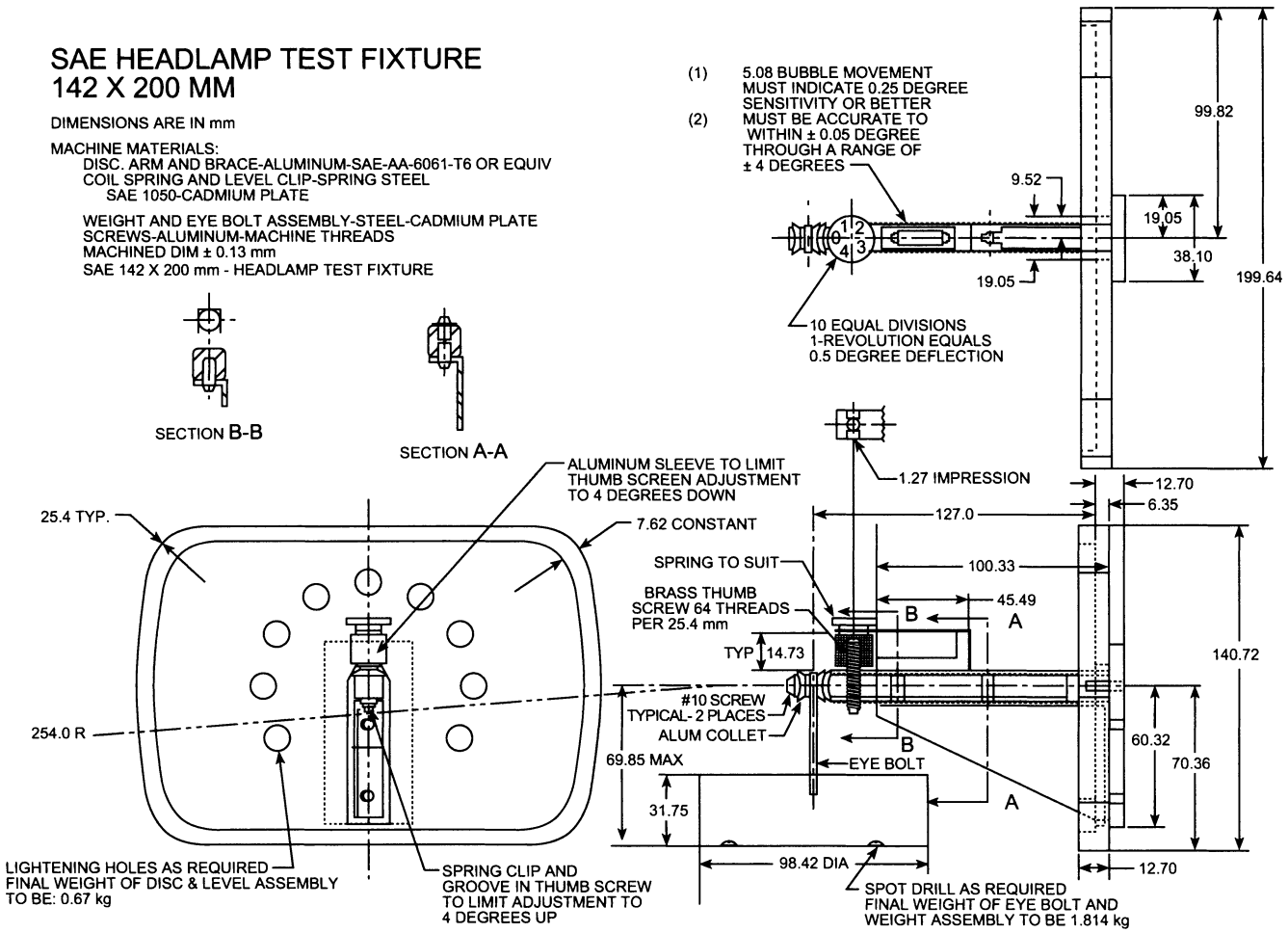
TYPES G AND H HEADLAMP AIM DEFLECTION TEST SETUP

FIGURE 15



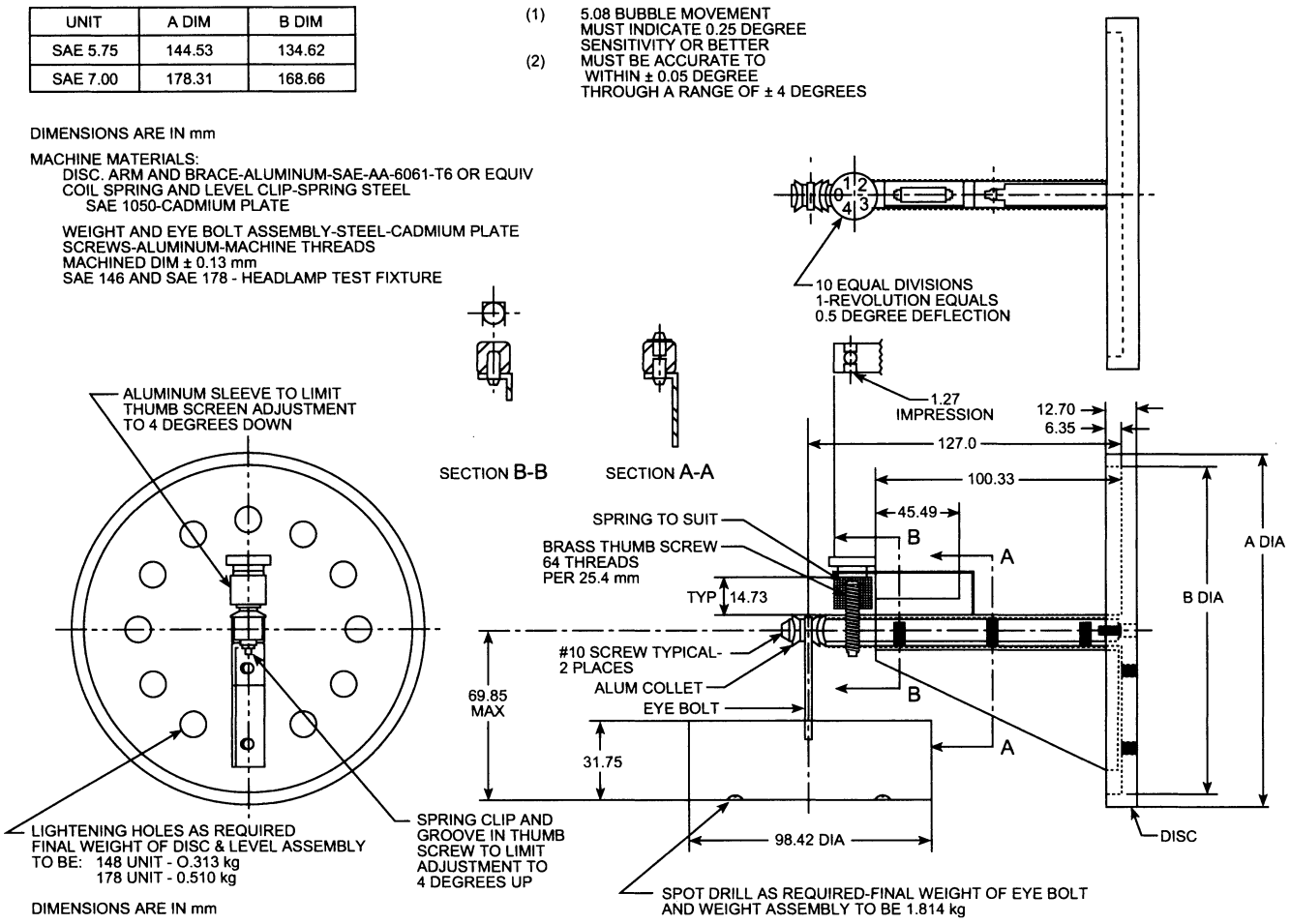
TYPES A AND E HEADLAMP AIM DEFLECTION TEST SETUP

FIGURE 16



TYPE B HEADLAMP AIM DEFLECTION TEST SETUP

FIGURE 17



TYPES C AND D HEADLAMP AIM DEFLECTION TEST SETUP

FIGURE 18

BILLING CODE 4910–59–C

Appendix to § 571.108: Table Of Contents

571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.
S1 Scope.
S2 Purpose.
S3 Application.
S4 Definitions.
S5 References to SAE publications.
S6 Vehicle requirements.
S6.1 Required lamps, reflective devices, and associated equipment by vehicle type.
S6.1.1 Quantity.
S6.1.1.1 Conspicuity systems.
S6.1.1.2 High-mounted stop lamps.
S6.1.1.3 Truck tractor rear turn signal lamps.
S6.1.1.4 Hazard warning lamps.
S6.1.2 Color.
S6.1.3 Mounting location and height.
S6.1.3.1 Mounting height.
S6.1.3.2 High-mounted stop lamp.
S6.1.4 License plate lamp.
S6.1.5 Activation.
S6.1.5.1 Stop lamp activation.
S6.2 Impairment.
S6.2.4 Daytime running lamps.
S6.2.5 Auxiliary identification lamps.
S6.3 Equipment combinations.
S6.4 Visibility and aiming.
S6.4.1 Effective projected luminous lens area.
S6.4.2 Visibility.
S6.4.3 Visibility options.
S6.4.4 SAE visibility alternative.
S6.4.5 Low-mounted lamps.
S6.4.6 School bus signal lamp aiming.
S6.5 Marking.
S6.5.1 DOT marking.
S6.5.2 DRL marking.
S6.6 Associated equipment.
S6.6.1 License plate holder.
S6.7 Replacement equipment.
S6.7.1 Design to conform.
S6.8 Physical tests.
S6.8.2 Samples for test.
S6.8.3 Laboratory facilities.
S6.8.4 Plastic optical materials.
S6.8.5 Photometric testing.
S6.8.5.1 Photometry measurements for all lamps except license lamps, headlamps, and DRLs.
S6.8.5.1.1 Location of test points.
S6.8.5.1.2 Multiple compartment and multiple lamp photometry.
S6.8.5.2 Bulbs.
S6.8.5.3 License plate lamp photometry.
S6.8.5.3.1 Illumination surface.
S6.8.5.3.2 Test stations.
S6.8.5.4 Reflex reflector photometry.
S6.8.5.4.1 Reflex reflector and retroreflective sheeting photometry measurements.
S6.8.5.4.1.1 Reflex reflector photometry measurement adjustments.
S6.8.5.5 Daytime running lamp (DRL) photometry measurements.
S6.8.5.6 Headlamp photometry measurements.
S6.8.5.6.1 Seasoning and test voltage.
S6.8.5.6.2 Aiming.
S6.8.5.6.3 Positioner.
S6.8.5.6.4 Photometer.
S6.8.5.6.5 Location of test points.
S6.8.5.6.6 Beam contributor photometry.
S7 Signal lamps, reflective devices, and associated equipment requirements.
S7.1 Turn signal lamps.
S7.1.1 Front turn signal lamps.
S7.1.1.1 Photometry.
S7.1.1.2 Spacing to other lamps.

S7.1.1.2.1 Spacing measurement for non-reflector lamps.
S7.1.1.2.2 Spacing measurement for lamps with reflectors.
S7.1.1.2.3 Spacing based photometric multipliers.
S7.1.1.3 Multiple compartments and multiple lamps.
S7.1.1.3.1 Lamps installed on vehicles 2032 mm. or more in overall width.
S7.1.1.3.2 Ratio to parking lamps and clearance lamps.
S7.1.2 Rear turn signal lamps.
S7.1.2.1 Photometry.
S7.1.2.2 Multiple compartments and multiple lamps.
S7.1.2.2.1 Lamps installed on vehicles 2032 mm. or more in overall width.
S7.1.2.3 Ratio to taillamps and clearance lamps.
S7.1.3 Physical tests.
S7.1.4 Combined lamp bulb indexing.
S7.2 Taillamps.
S7.2.1 Photometry.
S7.2.1.1 Multiple compartments and multiple lamps.
S7.2.1.1.1 Taillamps installed on vehicles 2032 mm .or more in overall width.
S7.2.2 Physical tests.
S7.3 Stop lamps.
S7.3.1 Photometry.
S7.3.1.1 Multiple compartments and multiple lamps.
S7.3.1.1.1 Lamps installed on vehicles 2032 mm. or more in overall width.
S7.3.1.2 Ratio to taillamps.
S7.3.2 Physical tests.
S7.3.3 Combined lamp bulb indexing.
S7.4 Side marker lamps.
S7.4.1 Photometry.
S7.4.1.1 Inboard photometry.
S7.4.2 Physical tests.
S7.5 Clearance and identification lamps.
S7.5.1 Photometry.
S7.5.2 Physical tests.
S7.6 Backup lamps.
S7.6.1 Photometry.
S7.6.2 Color.
S7.6.3 Physical tests.
S7.7 License plate lamps.
S7.7.1 Installation.
S7.7.1.1 Incident light from single lamp.
S7.7.1.2 Incident light from multiple lamps.
S7.7.2 Photometry.
S7.7.3 Physical tests.
S7.8 Parking lamps.
S7.8.1 Photometry.
S7.8.2 Physical tests.
S7.9 High mounted stop lamps.
S7.9.1 Accessibility.
S7.9.2 Interior mounting.
S7.9.3 Photometry.
S7.9.4 Physical tests.
S7.10 Reflex reflectors.
S7.10.1 Photometry.
S7.10.1.1 Alternative side reflex reflector.
S7.10.2 Physical tests.
S7.11 Daytime running lamps (DRL).
S7.11.1 Photometry.
S7.11.2 Spacing to turn signal lamps.
S7.11.3 Physical tests.
S7.12 Conspicuity systems.
S7.12.1 Retroreflective sheeting.
S7.12.1.1 Certification marking.
S7.12.1.2 Photometry.
S7.12.2 Conspicuity reflex reflectors.
S7.12.2.1 Certification marking.
S7.12.2.2 Photometry.
S7.13 School bus signal lamps.
S7.13.1 Photometry.
S7.13.2 Physical tests.
S7.14 Associated equipment.
S7.14.1 Turn signal operating unit.
S7.14.2 Turn signal flasher.
S7.14.3 Turn signal pilot indicator.
S7.14.3.1 Indicator size and color.
S7.14.3.2 Turn signal lamp failure.
S7.14.4 Headlamp beam switching device.
S7.14.4.1 Semi-automatic headlamp beam switching device.
S7.14.4.1.1 Operating instructions.
S7.14.4.1.2 Manual override.
S7.14.4.1.3 Fail-safe operation.
S7.14.4.1.4 Automatic dimming indicator.
S7.14.4.1.5 Lens accessibility.
S7.14.4.1.6 Mounting height.
S7.14.5 Upper beam headlamp indicator.
S7.14.5.1 Indicator size and location.
S7.14.6 Vehicular hazard warning signal operating unit.
S7.14.6.1 Operating unit switch.
S7.14.7 Vehicular hazard warning signal flasher.
S7.14.8 Vehicular hazard warning signal pilot indicator.
S7.14.8.1 Indicator size and color.
S8 Headlighting system requirements.
S8.1 Headlighting systems.
S8.1.1 Headlighting system type.
S8.1.2 Headlamp category.
S8.1.3 Vertical headlamp arrangement.
S8.1.4 Horizontal headlamp arrangement.
S8.1.5 Headlamp adjustments.
S8.2 Simultaneous beam activation.
S9 Sealed beam headlamp requirements.
S9.1 Installation.
S9.2 Simultaneous aim.
S9.3 Photometry.
S9.4 Physical tests.
S10 Integral beam headlamp requirements.
S10.1 Installation.
S10.2 Aimability.
S10.3 Simultaneous aim.
S10.4 Markings.
S10.5 Additional light sources.
S10.6 Photometry.
S10.7 Physical tests.
S11 Replaceable light source headlamp requirements.
S11.1 Installation.
S11.2 Aiming restrictions.
S11.3 Additional light sources.
S11.4 Replacement equipment.
S11.5 Markings.
S11.6 Photometry.
S11.7 Physical tests.
S12 Combination headlamp requirements.
S12.1 Installation.
S12.2 Photometry.
S12.3 Physical tests.
S13 Motorcycle headlamp requirements.
S13.1 Headlamp installation.
S13.1.1 Single headlamp.
S13.1.2 Two headlamps with both beams.
S13.1.3 Two headlamps, upper beam and lower beam.
S13.2 Photometry.
S13.3 Physical tests.
S13.4 Motorcycle replaceable bulb headlamp marking.
S13.5 Motorcycle headlamp modulation system.
S13.5.1 Modulation.
S13.5.2 Replacement modulators.
S13.5.2.1 Replacement performance.
S13.5.2.2 Replacement instructions.
S14 Aimability performance requirements.
S14.1 Headlamp mounting and aiming.
S14.2 Headlamp obstructions.
S14.3. Headlamp aiming systems.
S14.4 Aim adjustment interaction.
S14.5 Horizontal adjustment—visually aimed headlamp.
S14.6 Optical axis marking.
S14.6.1 Optical axis marking—vehicle.
S14.6.2 Optical axis marking—lamp.
S14.6.3 Optical axis marking—visual aim headlamp.
S14.7 Moveable reflectors.
S14.8 External aiming.
S14.8.1 Headlamp aiming device locating plates.
S14.8.2 Nonadjustable headlamp aiming device locating plates.
S14.9 On-vehicle aiming.
S14.9.1 Aim.
S14.9.1.1 Vertical aim.
S14.9.1.2 Horizontal aim.
S14.9.2 Aiming instructions.
S14.9.3 Permanent calibration.
S14.9.4 Replacement units.
S14.9.5 Physical tests.
S14.10 Visual/optical aiming.
S14.10.1 Vertical aim, lower beam.
S14.10.1.1 Vertical position of the cutoff.
S14.10.1.2 Vertical gradient.
S14.10.1.3 Horizontal position of the cutoff.
S14.10.1.4 Maximum inclination of the cutoff.
S14.10.1.5 Measuring the cutoff parameter.
S14.10.2 Horizontal aim, lower beam.
S14.10.3 Vertical aim, upper beam.
S14.10.4 Horizontal aim, upper beam.
S14.10.5 Photometric measurements.
S14.10.6 Visual/optical identification marking.
S15 Replaceable light source requirements
S15.1 Markings.
S15.2 Power and flux measurement.
S15.3 Power and flux measurement.
S15.4 Ballast markings.
S15.5 Gas discharge laboratory life.
S15.6 Physical tests.
S16 Headlamp concealment device requirements.
S16.7 Certification election.
S17 Headlamp marking requirements.
S17.1 Trademark.
S17.2 Voltage and trade number.
S17.3 Sealed beam headlamp markings.
S17.4 Replaceable bulb headlamp markings.
S17.5 Additional headlamp markings.
S18 Replaceable headlamp lens requirements.

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Note: The following appendices will not appear in the Code of Federal Regulations.

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APPENDIX A: FMVSS 108 REWRITE CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S1	S1 Scope
S2	S2 Purpose
S3 (except section citation)	S3 Application
S4	S4 Definitions
S5.1.1	S6.1.1 Quantity
S5.1.1	S6.6 Associated equipment
S5.1.1.1	S6.1.1.3 Truck tractor rear turn signal lamps
S5.1.1.1	Table I Number and color
S5.1.1.1	Table VII Footnote 6
S5.1.1.2	Table I Number and color
S5.1.1.3	S7.4.1.1 Side marker lamp inboard photometry
S5.1.1.3	Table I Number and color-Intermediate sidemarker lamps
S5.1.1.4	S7.10.1.1 Alternative side reflex reflectors
S5.1.1.4	Table I Lighting device
S5.1.1.5	S7.14.1 Turn signal operating unit
S5.1.1.6	S7.2.1 Taillamp photometry
S5.1.1.6	S7.8.1 Parking lamp photometry
S5.1.1.6	Table VIII Footnote 2
S5.1.1.6	Table XIV Footnote 2
S5.1.1.7	S7.1.1.1 Front turn signal lamp photometry
S5.1.1.7	S7.1.2.1 Rear turn signal lamp photometry
S5.1.1.8	S7.4.1 Inboard photometry requirements
S5.1.1.8	Table X Footnote 1
S5.1.1.9	Table I Number and color-Clearance lamp
S5.1.1.10	S6.1.1 Quantity
S5.1.1.10	Table I Number and color
S5.1.1.11	S4 Definitions-Optically combined
S5.1.1.11	S6.1.5 Activation
S5.1.1.11	Table I Activation-Stop lamps
S5.1.1.12	S7.1.1.3.1 Lamps installed on vehicles 2032 mm or more in overall width
S5.1.1.12	S7.1.2.2.1 Lamps installed on vehicles 2032 mm or more in overall width
S5.1.1.12	S7.3.1.1.1 Lamps installed on vehicles 2032 mm or more in overall width
S5.1.1.13	Table XXI Turn signal operating unit-Durability test
S5.1.1.14	Table I Number and color
S5.1.1.15	Table I Number and color
S5.1.1.16	S6.8.5.2.1 Bulbs without MSCD
S5.1.1.17	S6.8.5.2 Bulbs
S5.1.1.18	Table XII Single backup lamp system-Individual point photometry
S5.1.1.18	Table XII Two backup lamp system-Individual point photometry
S5.1.1.18	Table XII Footnote 4
S5.1.1.19	Table XXI Turn signal flasher-Starting time test
S5.1.1.19	Table XXI Turn signal flasher-Flash rate and percent current "on" time test
S5.1.1.20	Table XXI Turn signal flasher-Voltage drop test
S5.1.1.20	Table XXI Vehicular hazard warning signal flasher-Voltage drop test
S5.1.1.21	Table I Number and color
S5.1.1.22	S6.4.1 Effective projected luminous lens area
S5.1.1.22	Table IV Stop lamp-Effective projected luminous lens area
S5.1.1.22	Table IV Footnote 1
S5.1.1.22	Table IX Motor driven cycle stop lamp zone photometry
S5.1.1.22	Table IX Footnote 5
S5.1.1.22	S7.3.1 Stop lamp photometry
S5.1.1.25	S6.4.1 Effective projected luminous lens area

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S5.1.1.25	Table IV Front turn signal lamp-Effective projected luminous lens area
S5.1.1.25	Table IV Rear turn signal lamp-Effective projected luminous lens area
S5.1.1.26(a)	S6.4.1 Effective projected luminous lens area
S5.1.1.26(a)	Table IV Rear turn signal lamp-Effective projected luminous lens area
S5.1.1.26(a)	Table IV Stop lamp-Effective projected luminous lens area
S5.1.1.26(b)	S6.4.1 Effective projected luminous lens area
S5.1.1.26(b)	Table IV Rear turn signal lamp-Effective projected luminous lens area
S5.1.1.26(b)	Table IV Stop lamp-Effective projected luminous lens area
S5.1.1.27(a)	S6.1.1.2 High mounted stop lamp
S5.1.1.27(a)	Table I Lighting device
S5.1.1.27(a)(1)	S6.4.1 Effective projected luminous lens area
S5.1.1.27(a)(1)	Table IV High mounted stop lamp-Effective projected luminous lens area
S5.1.1.27(a)(2)	Table V HMSL-Visibility
S5.1.1.27(a)(3)	S7.9.2 High mounted stop lamp photometry
S5.1.1.27(a)(4)	S7.9.3 High mounted stop lamp physical tests
S5.1.1.27(a)(5)	S7.9.1 High mounted stop lamp accessibility
S5.1.1.27(b)	S6.1.1.2 High mounted stop lamp
S5.1.1.27(b)	Table I Lighting device
S5.1.1.27(b)(1)	S6.1.1.2 High mounted stop lamp
S5.1.1.27(b)(1)	S6.4.1 Effective projected luminous lens area
S5.1.1.27(b)(1)	Table IV High mounted stop lamp-Effective projected luminous lens area
S5.1.1.27(b)(2)	Table V HMSL-Visibility
S5.1.1.27(b)(3)	S7.9.2 High mounted stop lamp photometry
S5.1.1.27(b)(3)	Table XV Footnote 3
S5.1.1.27(b)(4)	S7.9.1 High mounted stop lamp accessibility
S5.1.1.29	S6.1.1.1.1 Conspicuity and reflex
S5.1.1.29	S7.10.1.1 Alternative side reflex reflectors
S5.1.2	S6.8.4 Plastic optical materials
S5.1.2	S7.1.3 Turn Signal lamp physical test requirements
S5.1.2	S7.2.2 Taillamp physical tests
S5.1.2	S7.3.2 Stop lamp physical tests
S5.1.2	S7.4.2 Side marker lamp physical tests
S5.1.2	S7.5.2 Clearance and identification lamp physical tests
S5.1.2	S7.6.3 Backup lamp physical tests
S5.1.2	S7.7.3 License plate lamp physical tests
S5.1.2	S7.8.2 Parking lamp physical tests
S5.1.2	S7.9.3 High mounted stop lamp physical tests
S5.1.2	S7.10.2 Reflex reflector physical tests
S5.1.2	S7.11.3 Daytime running lamp (DRL) physical tests
S5.1.2	S9.4 Sealed beam headlamp physical tests
S5.1.2	S10.7 Integral beam headlamp physical tests
S5.1.2	S11.7 Replaceable bulb headlamp physical tests
S5.1.2	S12.3 Combination headlamp physical tests
S5.1.2	S7.13.2 School bus signal lamp physical tests
S5.1.2	Table XXII Plastic optical material tests
S5.1.2(a)	Table XXII Plastic optical material tests
S5.1.2(b)	Table XXII Plastic optical material tests
S5.1.2(c)	Table XXII Plastic optical material tests
S5.1.2(d)	Table XXII Plastic optical material tests
S5.1.2(e)	Table XXII Plastic optical material tests
S5.1.2(f)	Table XXII Plastic optical material tests
S5.1.2(g)	Table XXII Plastic optical material tests
S5.1.3	S6.2.1 Impairment due to additional lamps or reflective devices
S5.1.4	Table I Additional Lamps Required on All School Buses except Multifunction School Activity Buses
S5.1.4(a)	Table I Number and color-School bus signal lamps
S5.1.4(b)	S7.13.1 School bus signal lamp photometry requirements
S5.1.4(b)	Table XVII Amber lamp photometry

APPENDIX A: FMVSS 108 REWRITE CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S5.1.4(b)(i)	Table I Number and color-School bus signal lamps
S5.1.4(b)(ii)	Table I Activation-School bus signal lamps
S5.1.5	S6.1.2 Color
S5.1.5	S7.1.3 Turn signal lamp physical tests
S5.1.5	S7.2.2 Taillamp physical tests
S5.1.5	S7.3.2 Stop lamp physical tests
S5.1.5	S7.4.2 Side marker lamp physical tests
S5.1.5	S7.5.2 Clearance and identification lamp physical tests
S5.1.5	S7.6.3 Backup lamp physical tests
S5.1.5	S7.7.3 License plate lamp physical tests
S5.1.5	S7.8.2 Parking lamp physical tests
S5.1.5	S7.9.3 High mounted stop lamp physical tests
S5.1.5	S7.10.2 Reflex reflector physical tests
S5.1.5	S7.11.3 Daytime running lamp (DRL) physical tests
S5.1.5	S7.13.2 School bus signal lamp physical tests
S5.1.5	S9.4 Sealed beam headlamp physical tests
S5.1.5	S10.7 Integral beam headlamp physical tests
S5.1.5	S11.7 Replaceable bulb headlamp physical tests
S5.1.5	S12.3 Combination headlamp physical tests
S5.1.5	Table XXII Color test
S5.2.1	S5.1 SAE Publications
S5.2.2	S17.3 Sealed beam headlamp markings
S5.3	S6.1.3 Mounting location and height
S5.3.1.2	Table I Mounting location-Reflex reflectors
S5.3.1.3	Table I Mounting location-Reflex reflectors
S5.3.1.3	Table I Mounting location-Sidemarker lamps
S5.3.1.4	Table I Mounting Height-Clearance lamps
S5.3.1.6	Table I Mounting location-Clearance lamps
S5.3.1.7	S7.1.1.2.3 Spacing based photometric multipliers
S5.3.1.7	Table VI Front turn signal lamp-2.5 x base individual point photometry
S5.3.1.7	Table VI Front turn signal lamp-2.5 x base zone photometry
S5.3.1.8(a)(1)	Table I Mounting location-High mounted stop lamp
S5.3.1.8(a)(2)	S6.1.3.2.1 High mounted stop lamp mounting
S5.3.1.8(a)(3)	S6.1.3.2.2 High mounted stop lamp reflections
S5.3.1.8(a)(3)	S7.9.2 Interior mounting
S5.3.1.8(b)	S6.1.1.2 High mounted stop lamp
S5.3.2(a)	S6.2.1 Impairment due to additional lamps or reflective devices
S5.3.2(b)	S6.4.3 Visibility options
S5.3.2(b)(1)	S6.4.3(a) Lens area option
S5.3.2(b)(1)	Table V Lens area visibility
S5.3.2(b)(2)	S6.4.3(b) Luminous intensity option
S5.3.2(b)(2)	Table V Luminous intensity visibility
S5.3.2(c)	S6.4.2 Visibility
S5.3.2(c)	Table V High mounted stop lamp visibility
S5.3.2(d)	S6.4.2 Visibility
S5.3.2(d)	Table V High mounted stop lamp visibility
S5.3.2(e)	S6.4.2 Visibility
S5.3.2(e)	Table V Backup lamp visibility
S5.3.2.1	Table I Mounting location-Clearance lamps
S5.3.2.1	Table XI Footnote 4
S5.3.2.2	S6.2.2 Lamp or reflective device obstructed
S5.3.2.3	S6.4.5 Low mounted lamps
S5.3.2.3	Table V Footnote 2
S5.3.2.3	Table VI Footnote 3
S5.3.2.3	Table VII Footnote 3
S5.3.2.3	Table VIII Footnote 3
S5.3.2.3	Table IX Footnote 4
S5.3.2.3	Table X Footnote 3

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S5.3.2.3	Table XI Footnote 1
S5.3.2.3	Table XIV Footnote 3
S5.3.2.3	Table XVI Footnote 1
S5.3.2.3	Table XVII Footnote 1
S5.3.2.4	S6.4.4 Alternative to S6.4.3
S5.4	S6.3 Equipment combinations
S5.4(a)	S6.3.1 High mounted stop lamp and cargo lamp
S5.4(b)	S4 Definitions-Optically combined
S5.4(b)	S6.3.2 Optically combined HMSL and cargo lamp prohibition
S5.4(c)	S4 Definitions-Optically combined
S5.4(c)	S6.3.3. Clearance lamp and taillamp
S5.5.1	S7.14.4 Headlamp beam switching device
S5.5.1	S7.14.4.1 Semi-automatic headlamp beam switching device
S5.5.2	S7.14.5 Upper beam headlamp indicator
S5.5.2	S7.14.5.1 Indicator size and location
S5.5.3	S6.1.5 Activation
S5.5.3	Table I Activation Taillamps
S5.5.4	S6.1.5.1 Stop lamp activation
S5.5.4	Table I Activation-High mounted stop lamps
S5.5.4	Table I Activation-Stop lamps
S5.5.5	S6.1.1.4 Hazard warning lamps
S5.5.5	S7.14.6.1 Operating unit switch
S5.5.6	S7.14.3 Turn signal pilot indicator
S5.5.6	S7.14.3.2 Turn signal lamp failure
S5.5.7	S6.2.3 Auxiliary lamp or reflective device requirements
S5.5.7	S6.1.5 Activation
S5.5.7(a)	Table I Activation Taillamps
S5.5.7(a)	Table I Activation-License plate lamps
S5.5.7(a)	Table I Activation-Parking lamps
S5.5.7(a)	Table I Activation-Sidemarker lamps
S5.5.7(b)	Table I Activation Taillamps
S5.5.7(b)	Table I Activation-License plate lamps
S5.5.7(b)	Table I Activation-Parking lamps
S5.5.7(b)	Table I Activation-Sidemarker lamps
S5.5.8	S8.2 Simultaneous beam activation
S5.5.8	Table I Activation-Headlamp
S5.5.8	Table II Footnote 1
S5.5.8	Table II Footnote 3
S5.5.8	Table II Footnote 4
S5.5.8	Table II Footnote 5
S5.5.9	Table I Activation-Headlamp
S5.5.9	Table I Activation-Motorcycle headlamps
S5.5.10	S6.2.3 Auxiliary lamp or reflective device requirements
S5.5.10(a)	S6.1.5 Activation
S5.5.10(a)	Table I Activation-School bus signal lamps
S5.5.10(a)	Table I Activation-Turn signals
S5.5.10(b)	S6.1.5 Activation
S5.5.10(b)	Table I Activation-Headlamp
S5.5.10(b)	Table I Activation-Sidemarker lamps
S5.5.10(b)	Table I Activation-Motorcycle headlamps
S5.5.10(c)	Table I Activation-Motorcycle headlamps
S5.5.10(d)	S6.1.5 Activation
S5.5.10(d)	Table I Activation Taillamps
S5.5.10(d)	Table I Activation-Backup lamps
S5.5.10(d)	Table I Activation-Clearance lamps
S5.5.10(d)	Table I Activation-DRL
S5.5.10(d)	Table I Activation-High mounted stop lamps
S5.5.10(d)	Table I Activation-Identification lamps

APPENDIX A: FMVSS 108 REWRITE CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S5.5.10(d)	Table I Activation-License plate lamps
S5.5.10(d)	Table I Activation-Parking lamps
S5.5.10(d)	Table I Activation-Sidemarker lamps
S5.5.10(d)	Table I Activation-Stop lamps
S5.5.11(a)	S6.2.4 Daytime running lamps (DRL)
S5.5.11(a)	Table I Activation-DRL
S5.5.11(a)	Table I Lighting device
S5.5.11(a)(1)	S7.11.1 Daytime running lamp (DRL) photometry
S5.5.11(a)(1)(i)	S7.11.1(a) Photometry exception
S5.5.11(a)(1)(ii)	S7.11.1(b) Photometry exception
S5.5.11(a)(2)	S6.5.2 DRL marking
S5.5.11(a)(3)	S7.11.3 Daytime running lamp (DRL) physical tests
S5.5.11(a)(3)	Table I Lighting device
S5.5.11(a)(3)	Table I Number and color
S5.5.11(a)(4)	S7.11.1 Daytime running lamp (DRL) photometry
S5.5.11(a)(4)	S7.11.2 Spacing to turn signal lamps
S5.5.11(a)(4)	S7.11.2.2 Not optically combined with turn signal lamp
S5.5.11(a)(5)	S7.11.2.1 Optically combined with turn signal lamp
S5.5.11(a)(5)	Table I Activation-DRL
S5.5.11(b)	Table I Lighting device
S5.5.11(b)	Table I Mounting height
S5.7	S6.1.1.1 Conspicuity systems
S5.7	S7.12 Conspicuity systems
S5.7.1	S6.1.1.1 Conspicuity systems
S5.7.1.1	S7.12.1 Retroreflective sheeting
S5.7.1.2	S6.8.5 Photometric testing
S5.7.1.2	S6.8.5.4.1 Reflex reflector and retroreflective sheeting photometry measurements
S5.7.1.2	S7.12.1 Retroreflective sheeting
S5.7.1.2	S7.12.1.2 Retroreflective sheeting photometry
S5.7.1.2	Table XVI Red C2 sheeting photometry
S5.7.1.2	Table XVI Red C3 sheeting photometry
S5.7.1.2	Table XVI Red C4 sheeting photometry
S5.7.1.2	Table XVI White C2 sheeting photometry
S5.7.1.2	Table XVI White C3 sheeting photometry
S5.7.1.2	Table XVI White C4 sheeting photometry
S5.7.1.3(a)	Table III Application pattern-Alternating
S5.7.1.3(b)	Table III Application pattern-Alternating
S5.7.1.3(c)	Table III Application pattern-Alternating
S5.7.1.3(d)	S7.12.1 Retroreflective sheeting
S5.7.1.3(e)	Table XVI Red sheeting photometry
S5.7.1.3(e)	Table XVI White sheeting photometry
S5.7.1.4(a)	Table III Application location
S5.7.1.4(b)	Table III Application spacing
S5.7.1.4(c)	Table III Application spacing
S5.7.1.4.1	Table III Trailer rear-Element 2
S5.7.1.4.1	Table III Trailer rear-Element 3
S5.7.1.4.1(a)	Table III Trailer rear-Element 1
S5.7.1.4.1(b)	Table III Trailer rear-Element 2
S5.7.1.4.1(c)	Table III Trailer rear-Element 3
S5.7.1.4.2(a)	Table III Trailer side-Alternating
S5.7.1.4.2(b)	Table III Trailer side-Alternating
S5.7.1.4.3(a)	Table III Truck tractor-Element 1
S5.7.1.4.3(b)	Table III Truck tractor-Element 2
S5.7.1.5	S6.5.1.1 DOT marking-conspicuity sheeting
S5.7.1.5	S7.12.1.1 Certification marking
S5.7.2	S6.8.5.4.1 Reflex reflector and retroreflective sheeting photometry measurements
S5.7.2	S7.12.2 Conspicuity reflex reflectors
S5.7.2.1	S7.12.2.2 Conspicuity reflex reflector photometry

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S5.7.2.1(a)	S6.8.5 Photometric testing
S5.7.2.1(b)	Table XVI Red conspicuity reflex reflector photometry
S5.7.2.1(c)	Table XVI White horizontal conspicuity reflex reflector photometry
S5.7.2.1(d)	Table XVI White vertical conspicuity reflex reflector photometry
S5.7.2.2(a)	Table III Application pattern-Alternating
S5.7.2.2(b)	Table III Application pattern-White
S5.7.2.3	S7.12.2.1 Certification marking
S5.7.3	S7.12.1 Retroreflective sheeting
S5.8.1	S6.7 Replacement equipment
S5.8.1	S18 Replaceable headlamp lens
S5.8.1	Table XXIII Humidity test
S5.8.2	S17.3 Sealed beam headlamp markings
S5.8.3	S6.7 Replacement equipment
S5.8.4	S6.7 Replacement equipment
S5.8.5	S6.7 Replacement equipment
S5.8.6	S6.7 Replacement equipment
S5.8.7	S6.7 Replacement equipment
S5.8.8	S6.7 Replacement equipment
S5.8.9	S6.7 Replacement equipment
S5.8.10	S6.5.1.2 DOT marking-except headlamps
S5.8.11	S18 Replaceable headlamp lens
S6.1	S5.1 SAE Recommended=mandatory
S6.2	S7.1.3 Turn signal lamp physical tests
S6.2	S7.2.2 Taillamp physical tests
S6.2	S7.3.2 Stop lamp physical tests
S6.2	S7.4.2 Side marker lamp physical tests
S6.2	S7.5.2 Clearance and identification lamp physical tests
S6.2	S7.6.3 Backup lamp physical tests
S6.2	S7.7.3 License plate lamp physical tests
S6.2	S7.8.2 Parking lamp physical tests
S6.2	S7.9.3 High mounted stop lamp physical tests
S6.2	S7.10.2 Reflex reflector physical tests
S6.2	S7.13.2 School bus signal lamp physical tests
S6.3	S4 Definitions-Effective projected luminous lens area
S7.1	Table I
S7.1	S8.1 Headlighting systems
S7.2(a)	S6.5.1 DOT marking
S7.2(b)	S17.1 Trademark
S7.2(c)	S17.2 Voltage and trade number
S7.2(d)	S6.8.5.6.2 Aiming
S7.2(d)	S6.8.5.6.5 Location of test points
S7.2(e)	S6.5.1 DOT marking
S7.2(e)	S18 Replaceable headlamp lens
S7.3	S8.1.1 Headlighting system type
S7.3	S8.1.2 Headlamp category
S7.3	S9 Sealed beam headlamps
S7.3.1	S17.3 Sealed beam headlamp markings
S7.3.2	S9.1 Sealed beam headlamp installation
S7.3.2	Table II Sealed beam headlamps Type A
S7.3.2(a)(3)	S6.8.5 Photometric testing
S7.3.2(a)(3)	S9.3 Sealed beam headlamp photometry
S7.3.2(a)(3)	Table II Sealed beam headlamps Type A
S7.3.2(b)	Table XXIII Retaining ring test
S7.3.2(b)	Table XXIII Headlamp connector test
S7.3.2(c)	S9.4 Sealed beam headlamp physical tests
S7.3.2(c)	Table XXIII Vibration test

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S7.3.2(d)	S9.4 Sealed beam headlamp physical tests
S7.3.2(d)	Table XXIII Headlamp wattage test
S7.3.2(d)	Table II Sealed beam headlamps Type A
S7.3.3	S9.1 Sealed beam headlamp installation
S7.3.3	Table II Sealed beam headlamps Type B
S7.3.3(a)	S6.8.5 Photometric testing
S7.3.3(a)	S9.3 Sealed beam headlamp photometry
S7.3.3(a)	Table II Sealed beam headlamps Type B
S7.3.3(b)	S9.4 Sealed beam headlamp physical tests
S7.3.3(b)	Table II Sealed beam headlamps Type B
S7.3.3(b)	Table XXIII Headlamp wattage test
S7.3.4	S6.8.5 Photometric testing
S7.3.4	S9.1 Sealed beam headlamp installation
S7.3.4	S9.3 Sealed beam headlamp photometry
S7.3.4	S9.4 Sealed beam headlamp physical tests
S7.3.4	Table II Sealed beam headlamps Type C
S7.3.5	S9.1 Sealed beam headlamp installation
S7.3.5	Table II Sealed beam headlamps Type D
S7.3.5(a)	S6.8.5 Photometric testing
S7.3.5(a)	S9.3 Sealed beam headlamp photometry
S7.3.5(b)	S9.4 Sealed beam headlamp physical test
S7.3.5(b)	Table XXIII Headlamp wattage test
S7.3.6	S9.1 Sealed beam headlamp installation
S7.3.6	Table II Sealed beam headlamps Type E
S7.3.6(a)	S9.3 Sealed beam headlamp photometry
S7.3.6(a),	S6.8.5 Photometric test requirements
S7.3.6(b)	S9.4 Sealed beam headlamp physical tests
S7.3.6(b)	Table XXIII Headlamp wattage test
S7.3.7	S9.1 Sealed beam headlamp installation
S7.3.7	Table II Sealed beam headlamps Type F
S7.3.7(a)	Relocate to Part 564, Appendix C
S7.3.7(b)	S6.8.5 Photometric testing
S7.3.7(b)	S6.8.5.6.2 Aiming
S7.3.7(b)	S9.3 Sealed beam headlamp photometry
S7.3.7(c)	S9.4 Sealed beam headlamp physical tests
S7.3.7(d)	S6.8.5 Photometric testing
S7.3.7(d)	S9.3 Sealed beam headlamp photometry
S7.3.7(e)(1)	S4 Definitions-Mounting ring (type F sealed beam)
S7.3.7(e)(2)	S4 Definitions-Retaining ring (type F sealed beam)
S7.3.7(e)(5)	Table XXIII Aiming adjustment test-Laboratory
S7.3.7(e)(6)	Table XXIII Aiming adjustment test-Laboratory
S7.3.7(e)(7)	Table XXIII Retaining ring test
S7.3.7(e)(8)	Table XXIII Torque deflection test
S7.3.7(f)	S17.3 Sealed beam headlamp markings
S7.3.7(g)	S9.4 Sealed beam headlamp physical tests
S7.3.7(g)	Table II Sealed beam headlamps Type F
S7.3.7(g)	Table XXIII Headlamp wattage test
S7.3.7(h)	S9.2 Type F sealed beam headlamp simultaneous aim
S7.3.7(h)(1)	S6.8.5 Photometric testing
S7.3.7(h)(1)	S9.2 Type F sealed beam headlamp simultaneous aim
S7.3.7(h)(2)	S9.2 Type F sealed beam headlamp simultaneous aim
S7.3.7(i)	S9.4 Sealed beam headlamp physical tests
S7.3.7(i)	Table XXIII Vibration test
S7.3.8	S9.1 Sealed beam headlamp installation
S7.3.8	Table II Sealed beam headlamps Type G
S7.3.8(b)	S6.8.5 Photometric testing
S7.3.8(b)	S9.3 Sealed beam headlamp photometry requirements
S7.3.8(c)(2)	Table XXIII Torque deflection test

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S7.3.8(d)	S9.4 Sealed beam headlamp physical tests
S7.3.8(d)	Table XXIII Vibration test
S7.3.8(e)	S9.4 Sealed beam headlamp physical tests
S7.3.8(e)	Table II Sealed beam headlamps Type G
S7.3.8(e)	Table XXIII Headlamp wattage test
S7.3.8(f)	S17.3 Sealed beam headlamp markings
S7.3.9	S9.1 Sealed beam headlamp installation
S7.3.9	Table II Sealed beam headlamps Type H
S7.3.9(a)	S6.8.5 Photometric testing
S7.3.9(a)	S9.3 Sealed beam headlamp photometry requirements
S7.3.9(a)	Table II Sealed beam headlamps Type H
S7.3.9(b)	S9.4 Sealed beam headlamp physical test requirements
S7.3.9(b)	Table II Sealed beam headlamps Type H
S7.3.9(b)	Table XXIII Headlamp wattage test
S7.3.9(c)	S17.3 Sealed beam headlamp markings
S7.4	S8.1.1 Headlighting system type
S7.4	S8.1.2 Headlamp category
S7.4	S10.1 Integral beam headlamp installation
S7.4(a)	S10.1 Integral beam headlamp installation
S7.4(a)	S10.6 Integral beam headlamp photometry
S7.4(a)(1)(i)	S6.8.5 Photometric testing
S7.4(a)(1)(i)	Table II Integral beam headlamps-4 lamp system
S7.4(a)(1)(ii)	S6.8.5 Photometric testing
S7.4(a)(1)(ii)	S8.2 Simultaneous beam activation
S7.4(a)(1)(ii)	Table II Integral beam headlamps-4 lamp system-simultaneous activation
S7.4(a)(1)(iii)	S6.8.5 Photometric testing
S7.4(a)(1)(iii)	Table II Integral beam headlamps-4 lamp system-upper and lower
S7.4(a)(2)	Table II Integral beam headlamps-2 lamp system
S7.4(a)(2)(i)	S6.8.5 Photometric testing
S7.4(a)(2)(i)	Table II Integral beam headlamps-2 lamp system
S7.4(a)(2)(ii)	S6.8.5 Photometric testing
S7.4(a)(2)(ii)	Table II Integral beam headlamps-2 lamp system
S7.4(a)(3)	S6.8.5 Photometric testing
S7.4(a)(3)	S6.8.5.6.6 Beam contributor photometry
S7.4(a)(3)	Table II Integral beam headlamps-beam contributor system
S7.4(a)(3)	Table II Footnote 6
S7.4(b)	S8.1.3 Vertical headlamp arrangement
S7.4(b)	S8.1.4 Horizontal headlamp arrangement
S7.4(c)(1)	S10.4 Markings
S7.4(c)(2)	S10.4 Markings
S7.4(d)	S10.3 Integral beam headlamp simultaneous aim
S7.4(d)	Table II Footnote 2
S7.4(e)	S6.8.5.6 Headlamp photometry measurements
S7.4(f)	S10.2 Integral beam headlamp aimability
S7.4(f)	Table XXIII Aiming adjustment test-Laboratory
S7.4(g)	S10.7 Integral beam headlamp physical tests
S7.4(g)	S12.3 Combination headlamp physical tests
S7.4(g)	S10.5 Additional light sources
S7.4(h)	S10.7 Integral beam headlamp physical tests
S7.4(h)(1)	Table XXIII Abrasion test
S7.4(h)(2)	Table XXIII Chemical resistance test
S7.4(h)(3)	Table XXIII Corrosion-connector test
S7.4(h)(4)	Table XXIII Dust test
S7.4(h)(5)(i)	Table XXIII Temperature cycle test
S7.4(h)(5)(ii)	Table XXIII Internal heat test
S7.4(h)(6)	Table XXIII Humidity test
S7.4(h)(7)	Table XXIII Vibration test
S7.4(i)	S10.5 Additional light sources

APPENDIX A: FMVSS 108 REWRITE CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S7.5	S8.1.1 Headlighting system type
S7.5	S8.1.2 Headlamp category
S7.5(a)	S11.1 Replaceable bulb headlamp installation
S7.5(b)	S6.8.5 Photometric testing
S7.5(b)	Table II Replaceable bulb headlamps
S7.5(c)	S6.8.5.6 Headlamp photometry measurements
S7.5(d)	S8.1.3 Vertical headlamp arrangement
S7.5(d)	S8.1.4 Horizontal headlamp arrangement
S7.5(d)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs
S7.5(d)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs
S7.5(d)(1)	S11.2 Replaceable bulb headlamp aiming restrictions
S7.5(d)(2)	S6.8.5 Photometric testing
S7.5(d)(2)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs
S7.5(d)(2)(i)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs-lower beam
S7.5(d)(2)(i)(A)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs-lower beam-outboard/upper bulb
S7.5(d)(2)(i)(A)(1)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs except HB2-lower beam-outboard/upper bulb
S7.5(d)(2)(i)(A)(2)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs including HB2-lower beam-outboard/upper bulb
S7.5(d)(2)(i)(B)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs-lower beam-both bulbs
S7.5(d)(2)(ii)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs-upper beam
S7.5(d)(2)(ii)(A)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs-upper beam-inboard/lower bulb
S7.5(d)(2)(ii)(A)(1)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs except HB2-upper beam-inboard/lower bulb
S7.5(d)(2)(ii)(A)(2)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs including HB2-upper beam-inboard/lower bulb
S7.5(d)(2)(ii)(B)	Table II Replaceable bulb headlamps-2 lamp system with only dual filament bulbs-upper beam-both bulbs
S7.5(d)(3)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs
S7.5(d)(3)(i)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs-lower beam-outboard/upper lamp
S7.5(d)(3)(i)(A)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs except HB2-lower beam-outboard/upper lamp
S7.5(d)(3)(i)(B)	S11.5 Markings
S7.5(d)(3)(i)(B)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs including HB2 except HB1 or HB5-lower beam-outboard/upper lamp
S7.5(d)(3)(ii)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs-upper beam-inboard/lower lamp
S7.5(d)(3)(ii)(A)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs except HB2-upper beam-inboard/lower lamp
S7.5(d)(3)(ii)(B)	S11.5 Markings
S7.5(d)(3)(ii)(B)	Table II Replaceable bulb headlamps-4 lamp system with only dual filament bulbs including HB2 except HB1 or HB5-upper beam-inboard/lower lamp
S7.5(e)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs
S7.5(e)	Table II Replaceable bulb headlamps-4 lamp system except with only dual filament bulbs
S7.5(e)(1)	S11.2 Replaceable bulb headlamp aiming restrictions
S7.5(e)(2)	S6.8.5 Photometric testing
S7.5(e)(2)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs
S7.5(e)(2)(i)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs-lower beam

APPENDIX A: FMVSS 108 REWRITE CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S7.5(e)(2)(i)(A)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs-lower beam-outboard/upper bulb
S7.5(e)(2)(i)(B)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs-lower beam-both bulbs
S7.5(e)(2)(ii)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs-upper beam
S7.5(e)(2)(ii)(A)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs-upper beam-inboard/lower bulb
S7.5(e)(2)(ii)(B)	Table II Replaceable bulb headlamps-2 lamp system except with only dual filament bulbs-upper beam-both bulbs
S7.5(e)(3)	Table II Replaceable bulb headlamps-4 lamp system except with only dual filament bulbs
S7.5(e)(3)(i)	S11.5 Markings
S7.5(e)(3)(i)	Table II Replaceable bulb headlamps-4 lamp system except with only dual filament bulbs-lower beam-outboard/upper lamp
S7.5(e)(3)(ii)	S11.5 Markings
S7.5(e)(3)(ii)	Table II Replaceable bulb headlamps-4 lamp system except with only dual filament bulbs-upper beam-inboard/lower lamp
S7.5(f)	S11.4 Replacement equipment
S7.5(g)	S17.4 Replaceable bulb headlamp markings
S7.5(h)	S11.2 Replaceable bulb headlamp aiming restrictions
S7.5(h)	Table XXIII Aiming adjustment test-Laboratory
S7.5(i)	S11.7 Replaceable bulb headlamp physical tests
S7.5(i)	Table XXIII Corrosion test
S7.5(j)	S11.3 Additional light sources
S7.6	S8.1.1 Headlighting system type
S7.6	S8.1.2 Headlamp category
S7.6	S12 Combination headlamps
S7.6.1	S12.1 Combination headlamp installation
S7.6.2	S6.8.5 Photometric testing
S7.6.2	S12.2 Combination headlamp photometry
S7.6.2	Table II Combination headlamps-2 lamp system
S7.6.2.1	S12.2 Combination headlamp photometry
S7.6.2.1	Table XXIII Headlamp physical test requirements
S7.6.2.2	S12.2 Combination headlamp photometry
S7.6.2.2	Table XXIII Headlamp physical test requirements
S7.6.3	S6.8.5 Photometric testing
S7.6.3	S12.2 Combination headlamp photometry
S7.6.3	Table II Combination headlamps-4 lamp system
S7.7	S15 Replaceable light sources
S7.7(a)	S15.1 Markings
S7.7(b)	S15.2 Power and flux measurement
S7.7(c)	S15.6 Replaceable light source physical test requirements
S7.7(c)	Table XXIII Pressure test for replaceable light sources
S7.7(d)	S15.3 Power and flux measurement
S7.7(d)(1)	S15.3.1 Testing-resistive filament light sources
S7.7(d)(2)	S15.3.2 Testing-discharge light sources
S7.7(e)	S15.4 Ballast markings
S7.7(f)	S15.5 Gas discharge laboratory life
S7.7(g)	S15.6 Replaceable light source physical test requirements
S7.7(g)	Table XXIII Deflection test for replaceable light sources
S7.8.1(a)	S14.6.2 Optical axis marking-headlamp
S7.8.1(b)	S14.6.1 Optical axis marking-vehicle
S7.8.1(c)	S14.6.3 Optical axis marking-visual aim headlamp
S7.8.2	S14.1 Headlamp mounting and aiming
S7.8.2.1(a)	S14.4 Aim adjustment interaction
S7.8.2.1(a)	Table XXIII Aiming adjustment test-On vehicle
S7.8.2.1(b)	S14.4 Aim adjustment interaction

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S7.8.2.1(b)	Table XXIII Aiming adjustment test-On vehicle
S7.8.2.1(c)	S14.5 Horizontal adjustment-visually aimed headlamp
S7.8.2.1(c)	Table XXIII Aiming adjustment test-Laboratory
S7.8.2.2	S6.8.5.6.2(h) Aiming-Moveable reflector
S7.8.2.2(a)	S14.7 Moveable reflectors
S7.8.2.2(a)	Table XXIII Aiming adjustment test-Laboratory
S7.8.2.2(b)	S14.7 Moveable reflectors
S7.8.2.2(b)	Table XXIII Aiming adjustment test-Laboratory
S7.8.2.2(c)	Table XXIII Aiming adjustment test-Laboratory
S7.8.2.2(d)	Table XXIII Aiming adjustment test-Laboratory
S7.8.3	S6.8.5.6.2(h) Aiming-Moveable reflector
S7.8.3	Table XXIII Aiming adjustment test-Laboratory
S7.8.3	Table XXIII Aiming adjustment test-On vehicle
S7.8.4	S6.8.5.6.2(h) Aiming-Moveable reflector
S7.8.4	Table XXIII Aiming adjustment test-Laboratory
S7.8.5	S14.2 Headlamp obstructions
S7.8.5	S14.3 Headlamp aiming systems
S7.8.5.1	S14.8 External aiming
S7.8.5.1(a)	Table XXIII Torque deflection test
S7.8.5.1(b)	Table XXIII Inward force test
S7.8.5.1(c)	Table XXIII Corrosion test
S7.8.5.1(d)	S14.8.1 Headlamp aiming device locating plates
S7.8.5.1(d)(1)	S14.8.1.1 Aiming pads
S7.8.5.1(d)(2)	S14.8.1.2 Aiming dimension marking
S7.8.5.1(e)	S14.8.2 Nonadjustable headlamp aiming device locating plates
S7.8.5.2	S14.9 On-vehicle aiming
S7.8.5.2(a)	S14.9.1 Aim
S7.8.5.2(a)(1)	S14.9.1.1 Vertical aim
S7.8.5.2(a)(1)(i)	S14.9.1.1.1 Graduations
S7.8.5.2(a)(1)(ii)	S14.9.1.1.2 VHAD markings
S7.8.5.2(a)(1)(iii)	S14.9.1.1.3 Graduation scale
S7.8.5.2(a)(1)(iv)	S14.9.1.1.4 Vertical indicator range
S7.8.5.2(a)(1)(v)	S14.9.1.1.5 Floor slope compensation
S7.8.5.2(a)(1)(vi)	S14.9.1.1.6 Graduation legibility
S7.8.5.2(a)(2)	S14.9.1.2 Horizontal aim
S7.8.5.2(a)(2)(i)	S14.9.1.2.1 Graduation scale
S7.8.5.2(a)(2)(ii)	S14.9.1.2.2 Horizontal markings
S7.8.5.2(a)(2)(iii)	S14.9.1.2.3 Graduation legibility
S7.8.5.2(a)(2)(iv)	S14.9.1.2.4 Horizontal indicator range
S7.8.5.2(b)(1)	S14.9.2.1 Aiming instruction location and content
S7.8.5.2(b)(2)	S14.9.2.2 Remote indicator instructions
S7.8.5.2(b)(3)	S14.4.1 Excess aim interaction
S7.8.5.2(c)	S14.9.3 VHAD permanent calibration
S7.8.5.2(d)	S14.9.5 VHAD physical test requirements
S7.8.5.2(d)(1)	S6.8.5.6 Headlamp photometry measurements
S7.8.5.2(d)(1)	S6.8.5.6.2 Aiming
S7.8.5.2(d)(1)	S6.8.5.6.2(b) Aiming-VHAD
S7.8.5.2(d)(2)	S14.9.4 Replacement units
S7.8.5.2(d)(3)(i)	Table XXIII VHAD scale graduation test
S7.8.5.2(d)(3)(i)	Table XXIII VHAD cold scale graduation test
S7.8.5.2(d)(3)(i)	Table XXIII VHAD hot scale graduation test
S7.8.5.2(d)(3)(i)	Table XXIII VHAD thermal cycle test
S7.8.5.2(d)(3)(i)	Table XXIII VHAD corrosion test
S7.8.5.2(d)(3)(i)	Table XXIII VHAD photometry test
S7.8.5.2(d)(3)(ii)(A)	Table XXIII VHAD cold scale graduation test
S7.8.5.2(d)(3)(ii)(B)	Table XXIII VHAD hot scale graduation test
S7.8.5.2(d)(3)(ii)(C)	Table XXIII VHAD thermal cycle test
S7.8.5.2(d)(3)(ii)(D)	Table XXIII VHAD corrosion test

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S7.8.5.2(d)(3)(ii)(E)	Table XXIII VHAD photometry test
S7.8.5.3	S14.10 Visual/optical aiming
S7.8.5.3(a)	S14.10.1 Vertical aim, lower beam
S7.8.5.3(a)(1)	S6.8.5.6.2(c) Aiming-LB VOL/VOR vertical
S7.8.5.3(a)(1)	S14.10.1.1 Vertical position of the cutoff
S7.8.5.3(a)(2)	S14.10.1.2 Vertical gradient
S7.8.5.3(a)(3)	S14.10.1.3 Horizontal position of the cutoff
S7.8.5.3(a)(4)	S14.10.1.4 Maximum inclination of the cutoff
S7.8.5.3(a)(5)(i)	S14.10.1.5 Measuring the cutoff parameter
S7.8.5.3(a)(5)(i)	S14.10.1.5.1 Test position
S7.8.5.3(a)(5)(ii)	S14.10.1.5.2 Headlamp aiming
S7.8.5.3(a)(5)(iii)	S14.10.1.5.3 Beam scanning
S7.8.5.3(a)(5)(iv)	S14.10.1.5.4 Gradient calculation
S7.8.5.3(b)	S6.8.5.6.2(d) Aiming-LB VOL/VOR horizontal
S7.8.5.3(b)	S14.10.2 Horizontal aim, lower beam
S7.8.5.3(c)(1)	S6.8.5.6.2(e) Aiming-UB VOL/VOR vertical
S7.8.5.3(c)(1)	S14.10.3.1 Combined upper and lower beams
S7.8.5.3(c)(2)	S6.8.5.6.2(e) Aiming-UB VOL/VOR vertical
S7.8.5.3(c)(2)	S14.10.3.2 Upper beam without lower beam
S7.8.5.3(d)(1)	S6.8.5.6.2(f) Aiming-UB VOL/VOR horizontal
S7.8.5.3(d)(1)	S14.10.4.1 Combined upper and lower beams
S7.8.5.3(d)(2)	S6.8.5.6.2(f) Aiming-UB VOL/VOR horizontal
S7.8.5.3(d)(2)	S14.10.4.2 Upper beam without lower beam
S7.8.5.3(d)(3)	S6.8.5.6.2(f) Aiming-UB VOL/VOR horizontal
S7.8.5.3(d)(3)	S14.10.4.3 Upper beam without lower beam of VHAD
S7.8.5.3(e)(1)	S14.10.5 Photometric measurements
S7.8.5.3(e)(2)	S6.8.5.6.2 Aiming
S7.8.5.3(e)(2)	S6.8.5.6.2(c) Aiming-LB VOL/VOR vertical
S7.8.5.3(e)(2)	S6.8.5.6.2(e) Aiming-UB VOL/VOR vertical
S7.8.5.3(f)(1)	S14.6.3 Optical axis marking-visual aim headlamp
S7.8.5.3(f)(2)(i)	S14.10.6.1 VOL/VOR/VO markings
S7.8.5.3(f)(2)(ii)	S14.10.6.1 VOL/VOR/VO markings
S7.8.5.3(f)(2)(iii)	S14.10.6.2 VOR/VO markings on sealed beams
S7.8.5.3(f)(2)(iv)	S14.10.6.1 VOL/VOR/VO markings
S7.8.5.3(f)(2)(v)	S14.10.6 Visual/optical identification marking
S7.9.1	Deleted-post implementation
S7.9.2	S6.8.5 Photometric testing
S7.9.2	S13 Motorcycle headlamps
S7.9.2(a)	S13.2 Motorcycle headlamp photometric requirements
S7.9.2(b)	S8.1 Headlighting systems
S7.9.3	S6.8.5.6.2(i) Aiming-Motorcycle UB
S7.9.4.1	S13.5 Motorcycle headlamp modulation system
S7.9.4.1(a)	S13.5.1(a) Rate
S7.9.4.1(b)	S13.5.1(b) Maximum power
S7.9.4.1(c)	S13.5.1(c) Minimum intensity
S7.9.4.1(d)	S13.5.1(d) Wiring
S7.9.4.1(e)	S13.5.1(e) Failure mode
S7.9.4.1(f)	S13.5.1(f) Sensor
S7.9.4.1(g)	S13.5.1(g) Voltage drop
S7.9.4.1(h)	S13.5.1(h) Full voltage operation
S7.9.4.2(a)	S13.5.2 Replacement modulator requirements
S7.9.4.2(a)	S13.5.2.1 Replacement performance requirements
S7.9.4.2(b)	S13.5.2.2 Replacement instructions
S7.9.5	S13.4 Motorcycle replaceable bulb headlamp marking
S7.9.6.1	S13.1 Motorcycle headlamp installation
S7.9.6.2(a)	S13.1.1 Single headlamp
S7.9.6.2(b)	S13.1.2 Two headlamps with both beams
S7.9.6.2(c)	S13.1.3 Two headlamps, upper beam and lower beam

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
S8.1	Table XXIII Abrasion test
S8.1	Table XXIII Chemical resistance test
S8.1	Table XXIII Dust test
S8.1	Table XXIII Temperature cycle test
S8.1	Table XXIII Internal heat test
S8.1	Table XXIII Humidity test
S8.1	Table XXIII Chemical resistance of replaceable lens reflectors test
S8.1	Table XXIII Corrosion resistance of replaceable lens reflectors test
S8.2(a)	Table XXIII Abrasion test-procedure
S8.2(b)	Table XXIII Abrasion test-procedure
S8.2(c)	Table XXIII Abrasion test-procedure
S8.2(d)	Table XXIII Abrasion test-procedure
S8.2(e)	Table XXIII Abrasion test-procedure
S8.3(a)	Table XXIII Chemical resistance test-procedure
S8.3(b)	Table XXIII Chemical resistance test-procedure
S8.3(c)	Table XXIII Chemical resistance test-procedure
S8.4(a)	Table XXIII Corrosion-connector test-procedure
S8.4(b)	Table XXIII Corrosion-connector test-procedure
S8.4(c)	Table XXIII Corrosion-connector test-procedure
S8.5	Table XXIII Dust test
S8.6	Table XXIII Temperature cycle test and internal test-procedure
S8.6.1	Table XXIII Temperature cycle test-procedure
S8.6.2(a)	Table XXIII Internal heat test-procedure
S8.6.2(b)	Table XXIII Internal heat test-procedure
S8.6.2(c)	Table XXIII Internal heat test-procedure
S8.7(a)	Table XXIII Humidity test-procedure
S8.7(b)	Table XXIII Humidity test-procedure
S8.7(c)	Table XXIII Humidity test-procedure
S8.7(d)	Table XXIII Humidity test-procedure
S8.7(e)	Table XXIII Humidity test-procedure
S8.7(f)	Table XXIII Humidity test-procedure
S8.8	Table XXIII Vibration test-procedure
S8.9	Table XXIII Sealing test-procedure
S8.10.1(a)	Table XXIII Chemical resistance of replaceable lens reflectors test-procedure
S8.10.1(b)	Table XXIII Chemical resistance of replaceable lens reflectors test-procedure
S8.10.1(c)	Table XXIII Chemical resistance of replaceable lens reflectors test-procedure
S8.10.2(a)	Table XXIII Corrosion resistance of replaceable lens reflectors test-procedure
S8.10.2(b)	Table XXIII Corrosion resistance of replaceable lens reflectors test-procedure
S9	Table XXIII Deflection test for replaceable light sources-procedure
S10(a)	S6.8.5.6 Headlamp photometry measurements
S10(a)	S6.8.5.6.2(g) Aiming-Simultaneous aim
S10(b)	S6.8.5.6 Headlamp photometry measurements
S10(b)	S6.8.5.6.2(g) Aiming-Simultaneous aim
S11	S6.8.5.5 Daytime running lamp (DRL) photometry measurements
S12.1	S16.1 Power loss during headlamp use
S12.2	S16.2 Manual device actuation
S12.3	S16.3 Single step actuation
S12.4	S16.4 Headlamp aiming and replacement
S12.5	S16.5 Operational temperature range and time limitation
S12.6	S16.6 ECE compliance alternative
S12.7	S16.7 Certification election
Figure 1a	S7.2.1 Taillamp photometry

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
Figure 1a	S7.8.1 Parking lamp photometry
Figure 1a	Table VIII Taillamp-Individual point photometry
Figure 1a	Table VIII Taillamp-Zone photometry
Figure 1a	Table XIV Parking lamp-Individual point photometry
Figure 1a	Table XIV Parking lamp-Zone photometry
Figure 1b	S7.2.1 Taillamp photometry
Figure 1b	S7.8.1 Parking lamp photometry
Figure 1b	Table VIII Taillamp-Individual point photometry
Figure 1b	Table VIII Taillamp-Zone photometry
Figure 1b	Table XIV Parking lamp-Individual point photometry
Figure 1b	Table XIV Parking lamp-Zone photometry
Figure 1b, Footnote 1	Table VIII Taillamp-Maximum photometric intensity
Figure 1b, Footnote 2	Table XIV Parking lamp-Maximum photometric intensity
Figure 1c	S7.2.1 Taillamp photometry
Figure 1c	S7.8.1 Parking lamp photometry
Figure 1c	Table VIII Taillamp-Individual point photometry
Figure 1c	Table VIII Taillamp-Zone photometry
Figure 1c	Table XIV Parking lamp-Individual point photometry
Figure 1c	Table XIV Parking lamp-Zone photometry
Figure 2	S7.6.1 Backup lamp photometry
Figure 2, Footnote 1	Table XII Single backup lamp system-Zone photometry
Figure 2, Footnote 1	Table XII Two backup lamp system-Zone photometry
Figure 2, Footnote 1	Table XII Footnote 2
Figure 2, Footnote 1	Table XII Footnote 3
Figure 4-1	Figure 3
Figure 4-2	Figure 3
Figure 4-3	Figure 3
Figure 4-4	Figure 3
Figure 5	Figure 5
Figure 6	Figure 6
Figure 7	Figure 7
Figure 8	Figure 8
Figure 9	Figure 9
Figure 10	S7.9.2 High mounted stop lamp photometry
Figure 10	Table XV High mounted stop lamp-Individual point photometry
Figure 10	Table XV High mounted stop lamp-Zone photometry
Figure 10, Footnote 1	Table XV Footnote 4
Figure 10, Footnote 2	Table XV Footnote 2
Figure 11	Relocate to Part 564, Appendix C
Figure 12	Relocate to Part 564, Appendix C
Figure 13	Relocate to Part 564, Appendix C
Figure 14	Relocate to Part 564, Appendix C
Figure 15-1	Table XVIII Upper beam #6 photometry
Figure 15-1	Table XIX Lower beam #1M photometry
Figure 15-1	Table XIX Lower beam #5M photometry
Figure 15-1	Table XVIII Upper beam #1 photometry
Figure 15-2	Table XVIII Upper beam #1 photometry
Figure 15-2	Table XVIII Upper beam #6 photometry
Figure 15-2	Table XIX Lower beam #1V photometry
Figure 15-2	Table XIX Lower beam #4V photometry
Figure 16	Figure 14
Figure 17-1	Table XVIII Upper beam #2 photometry
Figure 17-1	Table XIX Lower beam #2M photometry
Figure 17-2	Table XVIII Upper beam #2 photometry
Figure 17-2	Table XIX Lower beam #2V photometry
Figure 18	Relocate to Part 564, Appendix C
Figure 19	Table V Lens area visibility
Figure 19, Footnote 2	Table V Footnote 3

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
Figure 20	Table V Luminous intensity visibility
Figure 20, Footnote 2	Table V Footnote 4
Figure 21	Relocate to Part 564, Appendix C
Figure 22	Figure 15
Figure 25	Figure 10
Figure 26	Table II Replaceable bulb headlamps-2 lamp system-with HB2
Figure 26	Table II Replaceable bulb headlamps-2 lamp system-without HB2
Figure 26	Table II Replaceable bulb headlamps-4 lamp system-with HB2
Figure 26	Table II Replaceable bulb headlamps-4 lamp system-without HB2
Figure 27-1	Table XVIII Upper beam #3 photometry
Figure 27-1	Table XIX Lower beam #3M photometry
Figure 27-2	Table XVIII Upper beam #3 photometry
Figure 27-2	Table XIX Lower beam #3V photometry
Figure 28-1, Types 1A1, 1C1, and 1G1	Table XVIII Upper beam #4 photometry
Figure 28-1, Types 2A1, 2C1, and 2G1	Table XVIII Upper beam #5 photometry
Figure 28-2, Types 1A1, 1C1, and 1G1	Table XVIII Upper beam #4 photometry
Figure 28-2, Types 2A1, 2C1 and 2G1	Table XIX Lower beam #2V photometry
Figure 28-2, Types 2A1, 2C1, and 2G1	Table XVIII Upper beam #5 photometry
Figure 28-2, Types 2A1, 2C1, and 2G1	Table XIX Lower beam #4M photometry
Figure 29	S7.12.1.2 Retroreflective sheeting photometry
Figure 29	Table XVI Red C2 sheeting photometry
Figure 29	Table XVI Red C3 sheeting photometry
Figure 29	Table XVI Red C4 sheeting photometry
Figure 29	Table XVI White C2 sheeting photometry
Figure 29	Table XVI White C3 sheeting photometry
Figure 29	Table XVI White C4 sheeting photometry
Figure 30-1	Figure 11
Figure 30-2	Figure 11
Figure 30-3	Figure 11
Figure 30-4	Figure 11
Figure 31	Figure 13
Figure 32	Table XX Motor driven cycle photometry
Figure 32	Table XX Motor driven cycle with single lamp photometry
Figure 32	Table XX Motorcycle photometry
Table I	S1 Scope
Table I	S6.1 Required lamps, reflective devices, and associated equipment by vehicle type
Table I	S6.1.1 Quantity
Table I	S6.1.2 Color
Table I	S6.2.3 Auxiliary lamp or reflective device requirements
Table I	S6.6 Associated equipment
Table I	S7.14 Associated equipment
Table I	Table I Lighting device
Table I	Table I Mounting height
Table I	Table I Mounting location
Table I	Table I Number and color
Table II	S6.1 Required lamps, reflective devices, and associated equipment by vehicle type
Table II	S6.1.1 Quantity
Table II	S6.1.2 Color
Table II	S6.1.3 Mounting location and height
Table II	S6.2.3 Auxiliary lamp or reflective device requirements
Table II	Table I Lighting device
Table II	Table I Mounting height
Table II	Table I Mounting location
Table II	Table I Number and color
Table II heading	S6.1.3.1 Mounting height
Table III	S1 Scope

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
Table III	S6.1 Required lamps, reflective devices, and associated equipment by vehicle type
Table III	S6.1.1 Quantity
Table III	S6.1.2 Color
Table III	S6.2.3 Auxiliary lamp or reflective device requirements
Table III	S6.6 Associated equipment
Table III	S7.14 Associated equipment
Table III	Table I Lighting device
Table III	Table I Mounting height
Table III	Table I Mounting location
Table III	Table I Number and color
Table IV	S6.1 Required lamps, reflective devices, and associated equipment by vehicle type
Table IV	S6.1.1 Quantity
Table IV	S6.1.2 Color
Table IV	S6.1.3 Mounting location and height
Table IV	S6.2.3 Auxiliary lamp or reflective device requirements
Table IV	Table I Lighting device
Table IV	Table I Mounting height
Table IV	Table I Mounting location
Table IV	Table I Number and color
Table IV heading	S6.1.3.1 Mounting height
Table IV, footnote 1	S4 Definitions-Overall width
SAE device documents for photometry distance	S6.8.5.1 Photometry ex headlamp, license lamp, and DRL
SAE device documents referencing SAE J575	S6.8.1 Physical tests
SAE device documents referencing SAE J575	S6.8.5 Photometric testing
SAE J186a, Sep 1977, 2.1	S4 Definitions-High mounted stop lamp
SAE J186a, Sep 1977, 3	S7.9.3 High mounted stop lamp physical tests
SAE J186a, Sep 1977, 3.10	S6.8.5.1 Photometry ex headlamp, license lamp, and DRL
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SAE J222, Dec 1970, 3	S7.8.2 Parking lamp physical tests
SAE J387, Nov 1987	S4 Definitions-Optically combined
SAE J564a, Apr 1964	S7.14.4 Headlamp beam switching device
SAE J564a, Apr 1964	S7.14.5.1 Indicator size and location
SAE J565b, Feb 1969	S7.14.4.1 Semi-automatic headlamp beam switching device
SAE J565b, Feb 1969, 1	S4 Definitions-Semiautomatic headlamp beam switching device
SAE J565b, Feb 1969, 2	S7.14.4.1.1 Operating instructions
SAE J565b, Feb 1969, 4.2	Table XXI Semiautomatic headlamp beam switching device-Sensitivity test
SAE J565b, Feb 1969, 4.3	Table XXI Semiautomatic headlamp beam switching device-Voltage regulation test
SAE J565b, Feb 1969, 4.4	S7.14.4.1.2 Manual override
SAE J565b, Feb 1969, 4.4	Table XXI Semiautomatic headlamp beam switching device-Manual override test
SAE J565b, Feb 1969, 4.5	Table XXI Semiautomatic headlamp beam switching device-Warmup test
SAE J565b, Feb 1969, 4.6	S7.14.4.1.3 Fail safe operation
SAE J565b, Feb 1969, 4.7	Table XXI Semiautomatic headlamp beam switching device-Temperature test
SAE J565b, Feb 1969, 4.8	Table XXI Semiautomatic headlamp beam switching device-Dust test
SAE J565b, Feb 1969, 4.9	Table XXI Semiautomatic headlamp beam switching device-Corrosion test
SAE J565b, Feb 1969, 4.10	Table XXI Semiautomatic headlamp beam switching device-Vibration test
SAE J565b, Feb 1969, 4.11	Table XXI Semiautomatic headlamp beam switching device-Sunlight test
SAE J565b, Feb 1969, 4.12	Table XXI Semiautomatic headlamp beam switching device-Durability test
SAE J565b, Feb 1969, 4.13	S7.14.4.1.4 Automatic dimming indicator
SAE J565b, Feb 1969, 4.13	Table XXI Semiautomatic headlamp beam switching device-Return to upper beam test
SAE J565b, Feb 1969, 4.16	S7.14.4.1.5 Lens accessibility

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
SAE J565b, Feb 1969, 4.17	S7.14.4.1.6 Mounting height
SAE J566, Jan 1960, 1	S8.1.5 Headlamp adjustments
SAE J566, Jan 1960, 2	S8.1.5 Headlamp adjustments
SAE J566, Jan 1960, 3	S8.1.5 Headlamp adjustments
SAE J575, Dec 1988, 2.1	S6.8.2 Samples for test
SAE J575, Dec 1988, 2.3	S6.8.2 Samples for test
SAE J575, Dec 1988, 3	S6.8.3 Laboratory facilities
SAE J575, Dec 1988, 4.1	Table XXIII Vibration test-procedure
SAE J575, Dec 1988, 4.4	Table XXIII Corrosion test-procedure
SAE J575, Dec 1988, 4.6.2.1	S6.8.5.6.3 Positioner
SAE J575, Dec 1988, 4.6.2.2	S6.8.5.6.4 Photometer
SAE J575, Dec 1988, 4.6.2.3	S6.8.5.6.4 Photometer
SAE J575, Dec 1988, 4.6.2.3.1	S6.8.5.6.4 Photometer
SAE J575, Dec 1988, 4.6.3	S6.8.5.6 Headlamp photometry measurements
SAE J575, Dec 1988, 4.6.3.3	S6.8.5.6.5 Location of test points
SAE J575, Dec 1988, 4.6.3.4	S6.8.5.6.1 Seasoning and test voltage
SAE J575d, Aug 1967, B	S6.8.2 Samples for test
SAE J575d, Aug 1967, D	S6.8.3 Laboratory facilities
SAE J575d, Aug 1967, E	Table XXII Vibration test
SAE J575d, Aug 1967, F	Table XXII Moisture test
SAE J575d, Aug 1967, G	Table XXII Dust test
SAE J575d, Aug 1967, H	Table XXII Corrosion test
SAE J575d, Aug 1967, J	S6.8.5.1 Photometry ex headlamp, license lamp, and DRL
SAE J575d, Aug 1967, J	S6.8.5.1.1 Location of test points
SAE J575d, Aug 1967, J	Table X Footnote 2
SAE J575d, Aug 1967, J	Table XI Footnote 2
SAE J575d, Aug 1967, J	Table XII Footnote 1
SAE J575d, Aug 1967, J	Table XIV Footnote 1
SAE J575d, Aug 1967, J	Table XVII Red lamp photometry
SAE J575d, Aug 1967, J	Table XVII Footnote 2
SAE J575d, Aug 1967, K	Table XXII Out of focus test
SAE J575e, Aug 1970, B	S6.8.2 Samples for test
SAE J575e, Aug 1970, D	S6.8.3 Laboratory facilities
SAE J575e, Aug 1970, E	Table XXII Vibration test
SAE J575e, Aug 1970, F	Table XXII Moisture test
SAE J575e, Aug 1970, G	Table XXII Dust test
SAE J575e, Aug 1970, H	Table XXII Corrosion test
SAE J575e, Aug 1970, J	S6.8.5.1 Photometry ex headlamp, license lamp, and DRL
SAE J575e, Aug 1970, J	S6.8.5.1.1 Location of test points
SAE J575e, Aug 1970, J	Table VI Footnote 2
SAE J575e, Aug 1970, J	Table VII Footnote 2
SAE J575e, Aug 1970, J	Table VIII Footnote 1
SAE J575e, Aug 1970, J	Table IX Footnote 2
SAE J575e, Aug 1970, J	Table XV Footnote 1
SAE J576, Jul 1991	Table XXII Plastic optical material tests
SAE J576, Jul 1991, 2.2.1	S4 Definitions-Material
SAE J576, Jul 1991, 2.2.1.1	S4 Definitions-Coated materials
SAE J576, Jul 1991, 2.2.2.1	S4 Definitions-Exposed
SAE J576, Jul 1991, 2.2.2.2	S4 Definitions-Protected
SAE J576, Jul 1991, 2.2.3.1	S4 Definitions-Color bleeding
SAE J576, Jul 1991, 2.2.3.2	S4 Definitions-Crazing
SAE J576, Jul 1991, 2.2.3.3	S4 Definitions-Cracking
SAE J576, Jul 1991, 2.2.3.4	S4 Definitions-Haze

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
SAE J576, Jul 1991, 2.2.3.5	S4 Definitions-Delamination
SAE J576, Jul 1991, 5	S6.8.4.1 UV tracer
SAE J578c, Feb 1977	Table XXII Color test
SAE J578c, Feb 1977, 2	S4 Definitions-Color
SAE J578c, Feb 1977, Figure 1	Figure 1
SAE J580, Dec 1986, 2.1	S4 Definitions-Sealed beam headlamp assembly
SAE J580, Dec 1986, 2.2	S4 Definitions-Mounting ring
SAE J580, Dec 1986, 2.3	S4 Definitions-Retaining ring
SAE J580, Dec 1986, 2.4	S4 Definitions-Aiming screws
SAE J580, Dec 1986, 4.1.2	S9.4 Sealed beam headlamp physical tests
SAE J580, Dec 1986, 4.1.2	Table XXIII Corrosion test
SAE J580, Dec 1986, 4.2	S9.4 Sealed beam headlamp physical tests
SAE J580, Dec 1986, 4.2	Table XXIII Aiming adjustment test-Laboratory-procedure
SAE J580, Dec 1986, 4.2	Table XXIII Aiming adjustment test-On vehicle-procedure
SAE J580, Dec 1986, 4.3	S9.4 Sealed beam headlamp physical tests
SAE J580, Dec 1986, 4.3	Table XXIII Inward force test-procedure
SAE J580, Dec 1986, 4.4	S9.4 Sealed beam headlamp physical tests
SAE J580, Dec 1986, 4.4	Table XXIII Headlamp connector test-procedure
SAE J580, Dec 1986, 4.5	S9.4 Sealed beam headlamp physical tests
SAE J580, Dec 1986, 4.5	Table XXIII Torque deflection test-procedure
SAE J580, Dec 1986, 5.1.1.2	Table XXIII Corrosion test
SAE J580, Dec 1986, 5.1.2.1	Table XXIII Aiming adjustment test-Laboratory-performance requirement
SAE J580, Dec 1986, 5.1.2.2	Table XXIII Aiming adjustment test-Laboratory-performance requirement
SAE J580, Dec 1986, 5.1.3	Table XXIII Inward force test-performance requirement
SAE J580, Dec 1986, 5.1.4	Table XXIII Headlamp connector test-performance requirement
SAE J580, Dec 1986, 5.1.5	Table XXIII Torque deflection test-performance requirement
SAE J580, Dec 1986, 5.1.6	Table XXIII Retaining ring test-performance requirement
SAE J580, Dec 1986, Figure 1	Figure 4
SAE J580, Dec 1986, Figure 1	Table XXIII Headlamp connector test
SAE J580, Dec 1986, Figure 2	Figure 18
SAE J580, Dec 1986, Figure 3	Figure 16
SAE J580, Dec 1986, Figure 4	Figure 17
SAE J584, Apr 1964	S4 Definitions-Motor driven cycle
SAE J584, Apr 1964	S4 Definitions-Motorcycle or motor driven cycle headlamp
SAE J584, Apr 1964	S6.8.5.6.2(j) Aiming-Motorcycle LB
SAE J584, Apr 1964	S13.3 Motorcycle headlamp physical tests
SAE J584, Oct 1993	S6.8.5.6.2(i) Aiming-Motorcycle UB
SAE J585e, Sep 1977, 2.1	S4 Definitions-Taillamps
SAE J585e, Sep 1977, 3	S7.2.2 Taillamp physical tests
SAE J585e, Sep 1977, 3.1	S7.2.1.1 Multiple compartments and multiple lamps
SAE J585e, Sep 1977, 3.1	S7.2.1.1.1 Lamps installed on vehicles 2032 mm or more in overall width
SAE J585e, Sep 1977, 3.6.2	S6.8.5.1.2 Multiple compartment and lamp photometry
SAE J585e, Sep 1977, 3.6.2(a)	S6.8.5.1.2.1 Photometry of all compartments/lamps together
SAE J585e, Sep 1977, 3.6.2(b)	S6.8.5.1.2.2 Photometry of individual compartments/lamps
SAE J585e, Sep 1977, 4	Table V SAE taillamp visibility
SAE J586, Feb 1984, 2.1	S4 Definitions-Stop lamps
SAE J586, Feb 1984, 4.1.5.2	S6.8.5.1.2 Multiple compartment and lamp photometry
SAE J586, Feb 1984, 4.1.5.2.1	S6.8.5.1.2.1 Photometry of all compartments/lamps together
SAE J586, Feb 1984, 4.1.5.2.2	S6.8.5.1.2.2 Photometry of individual compartments/lamps
SAE J586, Feb 1984, 5	S7.3.2 Stop lamp physical tests
SAE J586, Feb 1984, 5.1.5.2	S7.3.1.1 Multiple compartments and multiple lamps
SAE J586, Feb 1984, 5.1.5.3	S7.3.1.2 Ratio to taillamps
SAE J586, Feb 1984, 5.1.5.3	Table IX Stop lamp-Photometric ratio

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
SAE J586, Feb 1984, 5.1.5.3	Table IX Footnote 6
SAE J586, Feb 1984, 5.1.5.3	Table IX Footnote 7
SAE J586, Feb 1984, 5.3.1	S7.3.3 Combined lamp bulb indexing
SAE J586, Feb 1984, 5.4.1	Table V SAE stop lamp visibility
SAE J586, Feb 1984, Table 1	S7.3.1 Stop lamp photometry
SAE J586, Feb 1984, Table 1	Table IX Stop lamp-Individual point photometry
SAE J586, Feb 1984, Table 1	Table IX Stop lamp-Zone photometry
SAE J586, Feb 1984, Table 1, Footnote a	Table IX Footnote 1
SAE J586, Feb 1984, Table 1, Footnote b	Table IX Footnote 3
SAE J587, Oct 1981, 2	S4 Definitions-License plate lamps
SAE J587, Oct 1981, 3	S7.7.3 License plate lamp physical tests
SAE J587, Oct 1981, 4	S7.7.3 License plate lamp physical tests
SAE J587, Oct 1981, 5	S7.7.3 License plate lamp physical tests
SAE J587, Oct 1981, 6.1	S6.6.1 License plate holder
SAE J587, Oct 1981, 6.2	S6.6.1 License plate holder
SAE J587, Oct 1981, 6.3	S6.8.5.3 License plate lamp photometry
SAE J587, Oct 1981, 6.3	S7.7.1 License plate lamp installation
SAE J587, Oct 1981, 6.4	S6.1.4 License plate lamp
SAE J587, Oct 1981, 6.5	S7.7.1.1 Incident light from a single lamp
SAE J587, Oct 1981, 6.6	S7.7.1.2 Incident light from multiple lamps
SAE J587, Oct 1981, 6.7	S6.8.5.3.1 Illumination surface
SAE J587, Oct 1981, 6.8	S6.8.5.3.2 Test stations
SAE J587, Oct 1981, 7	S7.7.2 License plate lamp photometry
SAE J587, Oct 1981, Figure 1	Table XIII License plate lamp target locations
SAE J587, Oct 1981, Figure 2	Table XIII License plate lamp target locations
SAE J588, Nov 1984, 2.1	S4 Definitions-Turn signal lamps
SAE J588, Nov 1984, 4	S7.1.3 Turn signal lamp physical tests
SAE J588, Nov 1984, 4.1.5.2	S6.8.5.1.2 Multiple compartment and lamp photometry
SAE J588, Nov 1984, 4.1.5.2.1	S6.8.5.1.2.1 Photometry of all compartments/lamps together
SAE J588, Nov 1984, 4.1.5.2.2	S6.8.5.1.2.2 Photometry of individual compartments/lamps
SAE J588, Nov 1984, 5.1.5.2	S7.1.1.3 Multiple compartments and multiple lamps
SAE J588, Nov 1984, 5.1.5.2	S7.1.2.2 Multiple compartments and multiple lamps
SAE J588, Nov 1984, 5.1.5.3	S7.1.1.3.2 Ratio to parking lamps
SAE J588, Nov 1984, 5.1.5.3	S7.1.2.3 Ratio to taillamps
SAE J588, Nov 1984, 5.1.5.3	Table VI Front turn signal lamp-Photometric ratio
SAE J588, Nov 1984, 5.1.5.3	Table VII Rear turn signal lamp-Photometric ratio
SAE J588, Nov 1984, 5.1.5.3	Table VII Footnote 8
SAE J588, Nov 1984, 5.1.5.4	S7.1.1.2 Spacing to other lamps
SAE J588, Nov 1984, 5.1.5.4	Table VI Front turn signal lamp-1.5 x base individual point photometry
SAE J588, Nov 1984, 5.1.5.4	Table VI Front turn signal lamp-1.5 x base zone photometry
SAE J588, Nov 1984, 5.1.5.4	Table VI Front turn signal lamp-2 x base individual point photometry
SAE J588, Nov 1984, 5.1.5.4	Table VI Front turn signal lamp-2 x base zone photometry
SAE J588, Nov 1984, 5.1.5.4	Table VI Front turn signal lamp-2.5 x base individual point photometry
SAE J588, Nov 1984, 5.1.5.4	Table VI Front turn signal lamp-2.5 x base zone photometry
SAE J588, Nov 1984, 5.1.5.4.1	S7.1.1.2.1 Spacing measurement for non reflector lamps
SAE J588, Nov 1984, 5.1.5.4.2	S7.1.1.2.2 Spacing measurement for lamps with reflectors
SAE J588, Nov 1984, 5.3.1	S7.1.4 Combined lamp bulb indexing
SAE J588, Nov 1984, 5.3.2	Table IV Front turn signal lamp-Effective projected luminous lens area
SAE J588, Nov 1984, 5.4.1	Table V SAE turn signal lamp visibility
SAE J588, Nov 1984, Table 1	S7.1.1.1 Front turn signal lamp photometry
SAE J588, Nov 1984, Table 1	S7.1.2.1 Rear turn signal lamp photometry
SAE J588, Nov 1984, Table 1	Table VI Front turn signal lamp-Base zone photometry
SAE J588, Nov 1984, Table 1	Table VII Rear turn signal lamp-Amber lamp zone photometry
SAE J588, Nov 1984, Table 1	Table VII Rear turn signal lamp-Red lamp zone photometry
SAE J588, Nov 1984, Table 1	Table VII Footnote 5
SAE J588, Nov 1984, Table 1, Footnote a	Table VI Footnote 1

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
SAE J588, Nov 1984, Table 1, Footnote a	Table VII Footnote 1
SAE J588, Nov 1984, Table 1, Footnote b	Table VII Footnote 4
SAE J588, Nov 1984, Table 2	S7.1.1.2.3 Spacing based photometric multipliers
SAE J588, Nov 1984, Table 2	Table VI Front turn signal lamp-1.5 x base individual point photometry
SAE J588, Nov 1984, Table 2	Table VI Front turn signal lamp-2 x base individual point photometry
SAE J588, Nov 1984, Table 2	Table VI Front turn signal lamp-2 x base zone photometry
SAE J588, Nov 1984, Table 2	Table VI Front turn signal lamp-2.5 x base individual point photometry
SAE J588, Nov 1984, Table 2	Table VI Front turn signal lamp-2.5 x base zone photometry
SAE J588, Nov 1984, Table 2	Table VI Front turn signal lamp-1.5 x base zone photometry
SAE J588, Nov 1984, Table 3	Table VI Front turn signal lamp-Base individual point photometry
SAE J588, Nov 1984, Table 3	Table VII Rear turn signal lamp-Amber lamp individual point photometry
SAE J588, Nov 1984, Table 3	Table VII Rear turn signal lamp-Red lamp individual point photometry
SAE J588e, Sep 1970	S7.14.3 Turn signal pilot indicator
SAE J588e, Sep 1970	S7.14.3.1 Indicator size and color
SAE J588e, Sep 1970, 3.9.1	Table VII Footnote 6
SAE J589, Apr 1964	S4 Definitions-Turn signal operating unit
SAE J589, Apr 1964	S7.14.1 Turn signal operating unit
SAE J589, Apr 1964	Table XXI Turn signal operating unit-Durability test
SAE J590b, Oct 1965	S4 Definitions-Turn signal flasher
SAE J590b, Oct 1965	S7.14.2 Turn signal flasher
SAE J590b, Oct 1965	Table XXI Turn signal flasher-Durability test
SAE J590b, Oct 1965, 1	Table XXI Turn signal flasher-Starting time test
SAE J590b, Oct 1965, 2	Table XXI Turn signal flasher-Voltage drop test
SAE J590b, Oct 1965, 3	Table XXI Turn signal flasher-Flash rate and percent current "on" time test
SAE J590b, Oct 1965, Figure 1	Figure 2
SAE J592e, Jul 1972, 2.1	S4 Definitions-Clearance lamps
SAE J592e, Jul 1972, 2.2	S4 Definitions-Side marker lamps
SAE J592e, Jul 1972, 2.3	S4 Definitions-Combination clearance and sidemarker lamps
SAE J592e, Jul 1972, 2.4	S4 Definitions-Identification lamps
SAE J592e, Jul 1972, 3	S7.4.2 Side marker lamp physical tests
SAE J592e, Jul 1972, 3	S7.5.2 Clearance and identification lamp physical tests
SAE J592e, Jul 1972, Table 1	S7.4.1 Side marker lamp photometry
SAE J592e, Jul 1972, Table 1	S7.5.1 Clearance and identification lamp photometry
SAE J592e, Jul 1972, Table 1	Table X Amber side marker lamp photometry
SAE J592e, Jul 1972, Table 1	Table X Red side marker lamp photometry
SAE J592e, Jul 1972, Table 1	Table XI Amber clearance and identification lamp photometry
SAE J592e, Jul 1972, Table 1	Table XI Red clearance and identification lamp photometry
SAE J592e, Jul 1972, Table 1, Footnote a	Table XI Footnote 3
SAE J592e, Jul 1972, Table 1, Footnote b	S7.4.1.1 Side marker lamp inboard photometry
SAE J592e, Jul 1972, Table 1, Footnote b	Table X Footnote 1
SAE J593c, Feb 1968	S4 Definitions-Backup lamp
SAE J593c, Feb 1968	S7.6.2 Color
SAE J593c, Feb 1968	S7.6.3 Backup lamp physical tests
SAE J593c, Feb 1968	Table I Activation-Backup lamps
SAE J593c, Feb 1968, Table 1, Footnote a	Table XII Single backup lamp system-Individual point photometry
SAE J593c, Feb 1968, Table 1, Footnote b	Table XII Two backup lamp system-Individual point photometry
SAE J593c, Feb 1968, Table 1, Footnote c	Table XII Backup lamp-Maximum photometric intensity
SAE J594f, Jan 1977, 2	S4 Definitions-Reflex reflectors
SAE J594f, Jan 1977, 3	S7.10.2 Reflex reflector physical tests
SAE J594f, Jan 1977, 3.1.7	S6.8.5.4 Reflex reflector photometry
SAE J594f, Jan 1977, 3.1.7	S6.8.5.4.1 Reflex reflector and retroreflective sheeting photometry measurements
SAE J594f, Jan 1977, 3.1.7	S6.8.5.4.1.1 Reflex reflector photometry measurements adjustments

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
SAE J594f, Jan 1977, 3.1.8	S6.8.2 Samples for test
SAE J594f, Jan 1977, Table 1	S7.10.1 Reflex reflector photometry
SAE J594f, Jan 1977, Table 1	Table XVI Red reflex reflector photometry
SAE J594f, Jan 1977, Table 1, Footnote a	Table XVI Amber reflex reflector photometry
SAE J594f, Jan 1977, Table 1, Footnote a	Table XVI White reflex reflector photometry
SAE J594f, Jan 1977, Table 1A	S7.10.1 Reflex reflector photometry
SAE J594f, Jan 1977, Table 1A	Table XVI Red reflex reflector photometry
SAE J594f, Jan 1977, Table 1A, Footnote a	Table XVI Amber reflex reflector photometry
SAE J594f, Jan 1977, Table 1A, Footnote a	Table XVI White reflex reflector photometry
SAE J887, Jul 1964	S4 Definitions-School bus signal lamps
SAE J887, Jul 1964	S6.4.1 Effective projected luminous lens area
SAE J887, Jul 1964	S6.4.2 Visibility
SAE J887, Jul 1964	S6.4.6 School bus signal lamp aiming
SAE J887, Jul 1964	S6.8.5.1 Photometry ex headlamp, license lamp, and DRL
SAE J887, Jul 1964	S7.13.2 School bus signal lamp physical tests
SAE J887, Jul 1964	Table I Activation-School bus signal lamps
SAE J887, Jul 1964	Table IV School bus signal lamp-Effective projected luminous lens area
SAE J887, Jul 1964	Table V School bus signal lamp visibility
SAE J887, Jul 1964, Table 1	S7.13.1 School bus signal lamp photometry
SAE J887, Jul 1964, Table 1	Table XVII School bus signal lamp photometry
SAE J910, Jan 1966, 1	S4 Definitions-Vehicular hazard warning signal operating unit
SAE J910, Jan 1966, 1	S7.14.6 Vehicular hazard warning signal operating unit
SAE J910, Jan 1966, 3(a)	S7.14.6 Vehicular hazard warning signal operating unit
SAE J910, Jan 1966, 3(b)	S7.14.6 Vehicular hazard warning signal operating unit
SAE J910, Jan 1966, 3(c)	S7.14.6.1 Operating unit switch
SAE J910, Jan 1966, 3(d)	S7.14.6 Vehicular hazard warning signal operating unit
SAE J910, Jan 1966, 3(e)	S7.14.6.1 Operating unit switch
SAE J910, Jan 1966, 4	Table XXI Vehicular hazard warning signal operating unit-Durability test
SAE J910, Jan 1966, 5	S7.14.8 Vehicular hazard warning signal pilot indicator
SAE J910, Jan 1966, 5	S7.14.8.1 Indicator size and color
SAE J945, Feb 1966	S4 Definitions-Vehicular hazard warning signal flasher
SAE J945, Feb 1966	S7.14.7 Vehicular hazard warning signal flasher
SAE J945, Feb 1966	S7.14.8 Vehicular hazard warning signal pilot indicator
SAE J945, Feb 1966, 1	Table XXI Vehicular hazard warning signal flasher- Starting time test
SAE J945, Feb 1966, 2	Table XXI Vehicular hazard warning signal flasher-Voltage drop test
SAE J945, Feb 1966, 3	Table XXI Vehicular hazard warning signal flasher-Flash rate and percent current "on" time test
SAE J945, Feb 1966, 4	Table XXI Vehicular hazard warning signal flasher-Durability test
SAE J945, Feb 1966, Figure 1	Figure 2
SAE J1383, Apr 1985, 2.1	S4 Definitions-Headlamp
SAE J1383, Apr 1985, 2.1.1	S4 Definitions-Sealed beam headlamp
SAE J1383, Apr 1985, 2.1.1	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, 2.2	S4 Definitions-Upper beam
SAE J1383, Apr 1985, 2.3	S4 Definitions-Lower beam
SAE J1383, Apr 1985, 2.4	S4 Definitions-Mechanically aimable headlamp
SAE J1383, Apr 1985, 2.5	S4 Definitions-Aiming plane
SAE J1383, Apr 1985, 2.6	S4 Definitions-Headlamp mechanical axis
SAE J1383, Apr 1985, 2.7	S4 Definitions-H-V axis
SAE J1383, Apr 1985, 2.9	S4 Definitions-Seasoning
SAE J1383, Apr 1985, 2.10	S4 Definitions-Design Voltage
SAE J1383, Apr 1985, 2.11	S4 Definitions-Test voltage
SAE J1383, Apr 1985, 2.12	S4 Definitions-Rated voltage
SAE J1383, Apr 1985, 4.1.4.1	S6.8.5.6.1 Seasoning and test voltage
SAE J1383, Apr 1985, 4.1.4.2	S6.8.5.6 Headlamp photometry measurements

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
SAE J1383, Apr 1985, 4.1.4.3	S6.8.5.6.1 Seasoning and test voltage
SAE J1383, Apr 1985, 4.1.4.3	S6.8.5.6.2(a) Aiming-mechanical
SAE J1383, Apr 1985, 4.2	S9.4 Sealed beam headlamp physical tests
SAE J1383, Apr 1985, 4.3	S9.4 Sealed beam headlamp physical tests
SAE J1383, Apr 1985, 4.5.1	S6.8.2 Samples for test
SAE J1383, Apr 1985, 5.3	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, 5.3.3	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, 5.4.3	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, 5.4.4	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, 5.4.4.1	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, 5.4.4.2	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, 5.4.4.3	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, 5.4.5	S17.3 Sealed beam headlamp markings
SAE J1383, Apr 1985, Figure 5	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 6	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 7	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 8	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 9	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 10	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 11	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 11	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 12	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 13	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 14	Relocate to Part 564, Appendix C
SAE J1383, Apr 1985, Figure 15	Relocate to Part 564, Appendix C
SAE J1395, Apr 1985, 2.1	S4 Definitions-Turn signal lamps
SAE J1395, Apr 1985, 4	S7.1.3 Turn signal lamp physical tests
SAE J1395, Apr 1985, 4.1.5.2	S6.8.5.1.2 Multiple compartment and lamp photometry
SAE J1395, Apr 1985, 4.1.5.2	S6.8.5.1.2.2 Photometry of individual compartments/lamps
SAE J1395, Apr 1985, 4.1.5.2	S6.8.5.1.2.3 Multiple compartment/lamp photometry for wide vehicles
SAE J1395, Apr 1985, 5.1.5.2	S7.1.1.3.2 Ratio to parking lamps and clearance lamps
SAE J1395, Apr 1985, 5.1.5.2	S7.1.2.3 Ratio to taillamps and clearance lamps
SAE J1395, Apr 1985, 5.1.5.2	Table VI Front turn signal lamp-Photometric ratio
SAE J1395, Apr 1985, 5.1.5.2	Table VI Footnote 4
SAE J1395, Apr 1985, 5.1.5.2	Table VII Rear turn signal lamp-Photometric ratio
SAE J1395, Apr 1985, 5.1.5.2	Table VII Footnote 7
SAE J1395, Apr 1985, 5.1.5.2	Table VII Footnote 8
SAE J1395, Apr 1985, 5.1.5.3	Table VII Footnote 6
SAE J1395, Apr 1985, 5.1.5.4	S7.1.1.2 Spacing to other lamps
SAE J1395, Apr 1985, 5.1.5.4	Table VI Front turn signal lamp-1.5 x base individual point photometry
SAE J1395, Apr 1985, 5.1.5.4	Table VI Front turn signal lamp-1.5 x base zone photometry
SAE J1395, Apr 1985, 5.1.5.4	Table VI Front turn signal lamp-2 x base individual point photometry
SAE J1395, Apr 1985, 5.1.5.4	Table VI Front turn signal lamp-2 x base zone photometry
SAE J1395, Apr 1985, 5.1.5.4	Table VI Front turn signal lamp-2.5 x base individual point photometry
SAE J1395, Apr 1985, 5.1.5.4	Table VI Front turn signal lamp-2.5 x base zone photometry
SAE J1395, Apr 1985, 5.1.5.5	S7.1.1.2.1 Spacing measurement for non reflector lamps
SAE J1395, Apr 1985, 5.1.5.6	S7.1.1.2.2 Spacing measurement for lamps with reflectors
SAE J1395, Apr 1985, 5.3.1	S7.1.4 Combined lamp bulb indexing
SAE J1395, Apr 1985, 5.3.2	Table IV Front turn signal lamp-Effective projected luminous lens area
SAE J1395, Apr 1985, 5.3.2	Table IV Rear turn signal lamp-Effective projected luminous lens area
SAE J1395, Apr 1985, 5.4.1	Table V SAE turn signal lamp visibility
SAE J1395, Apr 1985, Table 1	S7.1.1.1 Front turn signal lamp photometry
SAE J1395, Apr 1985, Table 1	S7.1.2.1 Rear turn signal lamp photometry
SAE J1395, Apr 1985, Table 1	Table VI Front turn signal lamp-Base zone photometry
SAE J1395, Apr 1985, Table 1	Table VII Rear turn signal lamp-Amber lamp zone photometry
SAE J1395, Apr 1985, Table 1	Table VII Rear turn signal lamp-Red lamp zone photometry
SAE J1395, Apr 1985, Table 1	Table VII Footnote 5

APPENDIX A:
FMVSS 108 REWRITE
CROSS REFERENCE

CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION	FMVSS 108 REWRITE CITATION
SAE J1395, Apr 1985, Table 1, Footnote a	Table VI Footnote 1
SAE J1395, Apr 1985, Table 1, Footnote a	Table VII Footnote 1
SAE J1395, Apr 1985, Table 1, Footnote b	Table VII Footnote 4
SAE J1395, Apr 1985, Table 2	S7.1.1.2.3 Spacing based photometric multipliers
SAE J1395, Apr 1985, Table 2	Table VI Front turn signal lamp-1.5 x base individual point photometry
SAE J1395, Apr 1985, Table 2	Table VI Front turn signal lamp-1.5 x base zone photometry
SAE J1395, Apr 1985, Table 2	Table VI Front turn signal lamp-2 x base individual point photometry
SAE J1395, Apr 1985, Table 2	Table VI Front turn signal lamp-2 x base zone photometry
SAE J1395, Apr 1985, Table 2	Table VI Front turn signal lamp-2.5 x base individual point photometry
SAE J1395, Apr 1985, Table 2	Table VI Front turn signal lamp-2.5 x base zone photometry
SAE J1395, Apr 1985, Table 3	Table VI Front turn signal lamp-Base individual point photometry
SAE J1395, Apr 1985, Table 3	Table VII Rear turn signal lamp-Amber lamp individual point photometry
SAE J1395, Apr 1985, Table 3	Table VII Rear turn signal lamp-Red lamp individual point photometry
SAE J1398, May 1985, 2.1	S4 Definitions-Stop lamps
SAE J1398, May 1985, 4.1.5.2	S6.8.5.1.2 Multiple compartment and lamp photometry
SAE J1398, May 1985, 4.1.5.2	S6.8.5.1.2.2 Photometry of individual compartments/lamps
SAE J1398, May 1985, 4.1.5.2	S6.8.5.1.2.3 Multiple compartment/lamp photometry for wide vehicles
SAE J1398, May 1985, 5	S7.3.2 Stop lamp physical test requirements
SAE J1398, May 1985, 5.1.5.2	S7.3.1.2 Ratio to taillamps
SAE J1398, May 1985, 5.1.5.2	Table IX Stop lamp-Photometric ratio
SAE J1398, May 1985, 5.1.5.2	Table IX Footnote 6
SAE J1398, May 1985, 5.1.5.2	Table IX Footnote 7
SAE J1398, May 1985, 5.3.2	Table IV Stop lamp-Effective projected luminous lens area
SAE J1398, May 1985, 5.4.1	Table V SAE stop lamp visibility
SAE J1398, May 1985, Table 1	S7.3.1 Stop lamp photometry
SAE J1398, May 1985, Table 1	Table IX Stop lamp-Individual point photometry
SAE J1398, May 1985, Table 1	Table IX Stop lamp-Zone photometry
SAE J1398, May 1985, Table 1, Footnote a	Table IX Footnote 1
SAE J1398, May 1985, Table 1, Footnote b	Table IX Footnote 3
Interpretation-Alkire 11/28/89	S6.2.2 Lamp or reflective device obstructed
Interpretation-Camp 6/17/97	S4 Definitions-Overall width
Interpretation-Clarke 7/28/05	S6.2.5 Auxiliary identification lamps
Interpretation-Farber 5/26/00	S6.1.5.1 Stop lamp activation
Interpretation-Farber 5/26/00	Table I Activation-Stop lamps
Interpretation-King 7/12/00	S6.1.3 Mounting location and height
Interpretation-Parkyn 6/1/98	Table IX Footnote 5
Interpretation-Spingler 4/6/2000	S14.10.1.5 Measuring the cutoff parameter
Interpretation-Spingler 7/2/99	Table XIX 10° U-90°U Test area
New	Figure 12-1
New	Figure 12-2
New language	Table V Footnote 1
New reference [49 CFR 571.5(j)]	S5.2 Incorporated by reference
New reference to other sections	S17.5 Additional headlamp markings

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S1 *Scope*	S1
S1 *Scope*	Table I
S1 *Scope*	Table III
S2 *Purpose*	S2
S3 *Application*	S3 (except section citation)
S4 *Definitions*	S4
S4 *Definitions-Aiming plane*	SAE J1383, Apr 1985, 2.5
S4 *Definitions-Aiming screws*	SAE J580, Dec 1986, 2.4
S4 *Definitions-Backup lamp*	SAE J593c, Feb 1968
S4 *Definitions-Clearance lamps*	SAE J592e, Jul 1972, 2.1
S4 *Definitions-Coated materials*	SAE J576, Jul 1991, 2.2.1.1
S4 *Definitions-Color*	SAE J578c, Feb 1977, 2
S4 *Definitions-Color bleeding*	SAE J576, Jul 1991, 2.2.3.1
S4 *Definitions-Combination clearance and sidemarker lamps*	SAE J592e, Jul 1972, 2.3
S4 *Definitions-Cracking*	SAE J576, Jul 1991, 2.2.3.3
S4 *Definitions-Crazing*	SAE J576, Jul 1991, 2.2.3.2
S4 *Definitions-Dayime Running Lamp*	SAE J2087, Aug 1991 & Jul 1997
S4 *Definitions-Delamination*	SAE J576, Jul 1991, 2.2.3.5
S4 *Definitions-Design Voltage*	SAE J1383, Apr 1985, 2.10
S4 *Definitions-Effective projected luminous lens area*	S6.3
S4 *Definitions-Exposed*	SAE J576, Jul 1991, 2.2.2.1
S4 *Definitions-Haze*	SAE J576, Jul 1991, 2.2.3.4
S4 *Definitions-Headlamp*	SAE J1383, Apr 1985, 2.1
S4 *Definitions-Headlamp mechanical axis*	SAE J1383, Apr 1985, 2.6
S4 *Definitions-High mounted stop lamp*	SAE J186a, Sep 1977, 2.1
S4 *Definitions-H-V axis*	SAE J1383, Apr 1985, 2.7
S4 *Definitions-Identification lamps*	SAE J592e, Jul 1972, 2.4
S4 *Definitions-License plate lamps*	SAE J587, Oct 1981, 2
S4 *Definitions-Lower beam*	SAE J1383, Apr 1985, 2.3
S4 *Definitions-Material*	SAE J576, Jul 1991, 2.2.1
S4 *Definitions-Mechanically aimable headlamp*	SAE J1383, Apr 1985, 2.4
S4 *Definitions-Motor driven cycle*	SAE J584, Apr 1964
S4 *Definitions-Motorcycle or motor driven cycle headlamp*	SAE J584, Apr 1964
S4 *Definitions-Mounting ring*	SAE J580, Dec 1986, 2.2
S4 *Definitions-Mounting ring (type F sealed beam)*	S7.3.7(e)(1)
S4 *Definitions-Optically combined*	S5.1.1.11
S4 *Definitions-Optically combined*	S5.4(b)
S4 *Definitions-Optically combined*	S5.4(c)
S4 *Definitions-Optically combined*	SAE J387, Nov 1987
S4 *Definitions-Overall width*	Interpretation-Camp 6/17/97
S4 *Definitions-Overall width*	Table IV, footnote 1
S4 *Definitions-Parking lamps*	SAE J222, Dec 1970, 2
S4 *Definitions-Protected*	SAE J576, Jul 1991, 2.2.2.2
S4 *Definitions-Rated voltage*	SAE J1383, Apr 1985, 2.12
S4 *Definitions-Reflex reflectors*	SAE J594f, Jan 1977, 2
S4 *Definitions-Retaining ring*	SAE J580, Dec 1986, 2.3
S4 *Definitions-Retaining ring (type F sealed beam)*	S7.3.7(e)(2)
S4 *Definitions-School bus signal lamps*	SAE J887, Jul 1964
S4 *Definitions-Sealed beam headlamp*	SAE J1383, Apr 1985, 2.1.1
S4 *Definitions-Sealed beam headlamp assembly*	SAE J580, Dec 1986, 2.1
S4 *Definitions-Seasoning*	SAE J1383, Apr 1985, 2.9
S4 *Definitions-Semiautomatic headlamp beam switching device*	SAE J565b, Feb 1969, 1
S4 *Definitions-Side marker lamps*	SAE J592e, Jul 1972, 2.2
S4 *Definitions-Stop lamps*	SAE J1398, May 1985, 2.1
S4 *Definitions-Stop lamps*	SAE J586, Feb 1984, 2.1

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S4 *Definitions-Taillamps*	SAE J585e, Sep 1977, 2.1
S4 *Definitions-Test voltage*	SAE J1383, Apr 1985, 2.11
S4 *Definitions-Turn signal flasher*	SAE J590b, Oct 1965
S4 *Definitions-Turn signal lamps*	SAE J1395, Apr 1985, 2.1
S4 *Definitions-Turn signal lamps*	SAE J588, Nov 1984, 2.1
S4 *Definitions-Turn signal operating unit*	SAE J589, Apr 1964
S4 *Definitions-Upper beam*	SAE J1383, Apr 1985, 2.2
S4 *Definitions-Vehicular hazard warning signal flasher*	SAE J945, Feb 1966
S4 *Definitions-Vehicular hazard warning signal operating unit*	SAE J910, Jan 1966, 1
S5.1 *Recommended=mandatory*	S6.1
S5.1 *SAE Publications*	S5.2.1
S5.2 *Incorporated by reference*	New reference [49 CFR 571.5(j)]
S6.1 *Required lamps, reflective devices, and associated equipment by vehicle type*	Table I
S6.1 *Required lamps, reflective devices, and associated equipment by vehicle type*	Table II
S6.1 *Required lamps, reflective devices, and associated equipment by vehicle type*	Table III
S6.1 *Required lamps, reflective devices, and associated equipment by vehicle type*	Table IV
S6.1.1 *Quantity*	S5.1.1
S6.1.1 *Quantity*	S5.1.1.10
S6.1.1 *Quantity*	Table I
S6.1.1 *Quantity*	Table II
S6.1.1 *Quantity*	Table III
S6.1.1 *Quantity*	Table IV
S6.1.1.1 *Conspicuity systems*	S5.7
S6.1.1.1 *Conspicuity systems*	S5.7.1
S6.1.1.1.1 Conspicuity and reflex	S5.1.1.29
S6.1.1.2 *High mounted stop lamp*	S5.1.1.27(a)
S6.1.1.2 *High mounted stop lamp*	S5.1.1.27(b)
S6.1.1.2 *High mounted stop lamp*	S5.1.1.27(b)(1)
S6.1.1.2 *High mounted stop lamp*	S5.3.1.8(b)
S6.1.1.3 *Truck tractor rear turn signal lamps*	S5.1.1.1
S6.1.1.4 *Hazard warning lamps*	S5.5.5
S6.1.2 *Color*	S5.1.5
S6.1.2 *Color*	Table I
S6.1.2 *Color*	Table II
S6.1.2 *Color*	Table III
S6.1.2 Color	Table IV
S6.1.3 *Mounting location and height*	Interpretation-King 7/12/00
S6.1.3 *Mounting location and height*	S5.3
S6.1.3 *Mounting location and height*	Table II
S6.1.3 *Mounting location and height*	Table IV
S6.1.3.1 *Mounting height*	Table II heading
S6.1.3.1 *Mounting height*	Table IV heading
S6.1.3.2.1 *High mounted stop lamp mounting*	S5.3.1.8(a)(2)
S6.1.3.2.2 *High mounted stop lamp reflections*	S5.3.1.8(a)(3)
S6.1.4 *License plate lamp*	SAE J587, Oct 1981, 6.4
S6.1.5 *Activation*	S5.1.1.11
S6.1.5 *Activation*	S5.5.10(a)
S6.1.5 *Activation*	S5.5.10(b)
S6.1.5 *Activation*	S5.5.10(d)
S6.1.5 *Activation*	S5.5.3
S6.1.5 *Activation*	S5.5.7
S6.1.5.1 *Stop lamp activation*	S5.5.4
S6.1.5.1 *Stop lamp activation*	Interpretation-Farber 5/26/00
S6.2.1 *Impairment due to additional lamps or reflective devices*	S5.1.3
S6.2.1 *Impairment due to additional lamps or reflective devices*	S5.3.2(a)
S6.2.2 *Lamp or reflective device obstructed*	Interpretation-Alkire 11/28/89

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S6.2.2 *Lamp or reflective device obstructed*	S5.3.2.2
S6.2.3 *Auxiliary lamp or reflective device requirements*	S5.5.10
S6.2.3 *Auxiliary lamp or reflective device requirements*	S5.5.7
S6.2.3 *Auxiliary lamp or reflective device requirements*	Table I
S6.2.3 *Auxiliary lamp or reflective device requirements*	Table II
S6.2.3 *Auxiliary lamp or reflective device requirements*	Table III
S6.2.3 *Auxiliary lamp or reflective device requirements*	Table IV
S6.2.4 *Daytime running lamps (DRL)*	S5.5.11(a)
S6.2.5 *Auxiliary identification lamps*	Interpretation-Clarke 7/28/05
S6.3 *Equipment combinations*	S5.4
S6.3.1 *High mounted stop lamp and cargo lamp*	S5.4(a)
S6.3.2 *Optically combined HSML and cargo lamp prohibitition*	S5.4(b)
S6.3.3. *Clearance lamp and taillamp*	S5.4(c)
S6.4.1 *Effective projected luminous lens area*	S5.1.1.22
S6.4.1 *Effective projected luminous lens area*	S5.1.1.25
S6.4.1 *Effective projected luminous lens area*	S5.1.1.26(a)
S6.4.1 *Effective projected luminous lens area*	S5.1.1.26(b)
S6.4.1 *Effective projected luminous lens area*	S5.1.1.27(a)(1)
S6.4.1 *Effective projected luminous lens area*	S5.1.1.27(b)(1)
S6.4.1 *Effective projected luminous lens area*	SAE J887, Jul 1964
S6.4.2 *Visibility*	S5.3.2(c)
S6.4.2 *Visibility*	S5.3.2(d)
S6.4.2 *Visibility*	S5.3.2(e)
S6.4.2 *Visibility*	SAE J887, Jul 1964
S6.4.3 *Visibility options*	S5.3.2(b)
S6.4.3(a) *Lens area option*	S5.3.2(b)(1)
S6.4.3(b) *Luminous intensity option*	S5.3.2(b)(2)
S6.4.4 *Alternative to S6.4.3*	S5.3.2.4
S6.4.5 *Low mounted lamps*	S5.3.2.3
S6.4.6 *School bus signal lamp aiming*	SAE J887, Jul 1964
S6.5.1 *DOT marking*	S7.2(a)
S6.5.1 *DOT marking*	S7.2(e)
S6.5.1.1 *DOT marking-conspicuity sheeting*	S5.7.1.5
S6.5.1.2 *DOT marking-except headlamps*	S5.8.10
S6.5.2 *DRL marking*	S5.5.11(a)(2)
S6.6 *Associated equipment*	S5.1.1
S6.6 *Associated equipment*	Table I
S6.6 *Associated equipment*	Table III
S6.6.1 *License plate holder*	SAE J587, Oct 1981, 6.1
S6.6.1 *License plate holder*	SAE J587, Oct 1981, 6.2
S6.7 *Replacement equipment*	S5.8.1
S6.7 *Replacement equipment*	S5.8.3
S6.7 *Replacement equipment*	S5.8.4
S6.7 *Replacement equipment*	S5.8.5
S6.7 *Replacement equipment*	S5.8.6
S6.7 *Replacement equipment*	S5.8.7
S6.7 *Replacement equipment*	S5.8.8
S6.7 *Replacement equipment*	S5.8.9
S6.8.1 *Physical tests*	SAE device documents referencing SAE J575
S6.8.2 *Samples for test*	SAE J1383, Apr 1985, 4.5.1
S6.8.2 *Samples for test*	SAE J575, Dec 1988, 2.1
S6.8.2 *Samples for test*	SAE J575, Dec 1988, 2.3
S6.8.2 *Samples for test*	SAE J575d, Aug 1967, B
S6.8.2 *Samples for test*	SAE J575e, Aug 1970, B
S6.8.2 *Samples for test*	SAE J594f, Jan 1977, 3.1.8
S6.8.3 *Laboratory facilities*	SAE J575, Dec 1988, 3
S6.8.3 *Laboratory facilities*	SAE J575d, Aug 1967, D
S6.8.3 *Laboratory facilities*	SAE J575e, Aug 1970, D

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S6.8.4 *Plastic optical materials*	S5.1.2
S6.8.4.1 *UV tracer*	SAE J576, Jul 1991, 5
S6.8.5 *Photometric testing*	S5.7.1.2
S6.8.5 *Photometric testing*	S5.7.2.1(a)
S6.8.5 *Photometric testing*	S7.3.2(a)(3)
S6.8.5 *Photometric testing*	S7.3.3(a)
S6.8.5 *Photometric testing*	S7.3.4
S6.8.5 *Photometric testing*	S7.3.5(a)
S6.8.5 *Photometric testing*	S7.3.6(a),
S6.8.5 *Photometric testing*	S7.3.7(b)
S6.8.5 *Photometric testing*	S7.3.7(d)
S6.8.5 *Photometric testing*	S7.3.7(h)(1)
S6.8.5 *Photometric testing*	S7.3.8(b)
S6.8.5 *Photometric testing*	S7.3.9(a)
S6.8.5 *Photometric testing*	S7.4(a)(1)(i)
S6.8.5 *Photometric testing*	S7.4(a)(1)(ii)
S6.8.5 *Photometric testing*	S7.4(a)(1)(iii)
S6.8.5 *Photometric testing*	S7.4(a)(2)(i)
S6.8.5 *Photometric testing*	S7.4(a)(2)(ii)
S6.8.5 *Photometric testing*	S7.4(a)(3)
S6.8.5 *Photometric testing*	S7.5(b)
S6.8.5 *Photometric testing*	S7.5(d)(2)
S6.8.5 *Photometric testing*	S7.5(e)(2)
S6.8.5 *Photometric testing*	S7.6.2
S6.8.5 *Photometric testing*	S7.6.3
S6.8.5 *Photometric testing*	S7.9.2
S6.8.5 *Photometric testing*	SAE device documents referencing SAE J575
S6.8.5.1 *Photometry ex headlamp, license lamp, & DRL*	SAE device documents for photometry distance
S6.8.5.1 *Photometry ex headlamp, license lamp, & DRL*	SAE J186a, Sep 1977, 3.10
S6.8.5.1 *Photometry ex headlamp, license lamp, & DRL*	SAE J575d, Aug 1967, J
S6.8.5.1 *Photometry ex headlamp, license lamp, & DRL*	SAE J575e, Aug 1970, J
S6.8.5.1 *Photometry ex headlamp, license lamp, & DRL*	SAE J887, Jul 1964
S6.8.5.1.1 *Location of test points*	SAE J575d, Aug 1967, J
S6.8.5.1.1 *Location of test points*	SAE J575e, Aug 1970, J
S6.8.5.1.2 *Multiple comp & lamp photometry*	SAE J1395, Apr 1985, 4.1.5.2
S6.8.5.1.2 *Multiple comp & lamp photometry*	SAE J1398, May 1985, 4.1.5.2
S6.8.5.1.2 *Multiple comp & lamp photometry*	SAE J585e, Sep 1977, 3.6.2
S6.8.5.1.2 *Multiple comp & lamp photometry*	SAE J586, Feb 1984, 4.1.5.2
S6.8.5.1.2 *Multiple comp & lamp photometry*	SAE J588, Nov 1984, 4.1.5.2
S6.8.5.1.2.1 *Photometry of all compartments/lamps together*	SAE J585e, Sep 1977, 3.6.2(a)
S6.8.5.1.2.1 *Photometry of all compartments/lamps together*	SAE J586, Feb 1984, 4.1.5.2.1
S6.8.5.1.2.1 *Photometry of all compartments/lamps together*	SAE J588, Nov 1984, 4.1.5.2.1
S6.8.5.1.2.2 *Photometry of individual compartments/lamps*	SAE J1395, Apr 1985, 4.1.5.2
S6.8.5.1.2.2 *Photometry of individual compartments/lamps*	SAE J1398, May 1985, 4.1.5.2
S6.8.5.1.2.2 *Photometry of individual compartments/lamps*	SAE J585e, Sep 1977, 3.6.2(b)
S6.8.5.1.2.2 *Photometry of individual compartments/lamps*	SAE J586, Feb 1984, 4.1.5.2.2
S6.8.5.1.2.2 *Photometry of individual compartments/lamps*	SAE J588, Nov 1984, 4.1.5.2.2
S6.8.5.1.2.3 *Multiple compartment/lamp photometry for wide vehicles*	SAE J1395, Apr 1985, 4.1.5.2
S6.8.5.1.2.3 *Multiple compartment/lamp photometry for wide vehicles*	SAE J1398, May 1985, 4.1.5.2
S6.8.5.2 *Bulbs*	S5.1.1.17
S6.8.5.2.1 *Bulbs without MSCD*	S5.1.1.16
S6.8.5.3 *License plate lamp photometry*	SAE J587, Oct 1981, 6.3
S6.8.5.3.1 *Illumination surface*	SAE J587, Oct 1981, 6.7
S6.8.5.3.2 *Test stations*	SAE J587, Oct 1981, 6.8
S6.8.5.4 *Reflex reflector photometry*	SAE J594f, Jan 1977, 3.1.7
S6.8.5.4.1 *Reflex reflector and retroreflective sheeting photometry measurements*	S5.7.1.2
S6.8.5.4.1 *Reflex reflector and retroreflective sheeting photometry measurements*	S5.7.2
S6.8.5.4.1 *Reflex reflector and retroreflective sheeting photometry measurements*	SAE J594f, Jan 1977, 3.1.7

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S6.8.5.4.1.1 *Reflex reflector photometry measurements adjustments*	SAE J594f, Jan 1977, 3.1.7
S6.8.5.5 *Daytime running lamp (DRL) photometry measurements*	S11
S6.8.5.6 *Headlamp photometry measurements*	S10(a)
S6.8.5.6 *Headlamp photometry measurements*	S10(b)
S6.8.5.6 *Headlamp photometry measurements*	S7.4(e)
S6.8.5.6 *Headlamp photometry measurements*	S7.5(c)
S6.8.5.6 *Headlamp photometry measurements*	S7.8.5.2(d)(1)
S6.8.5.6 *Headlamp photometry measurements*	SAE J1383, Apr 1985, 4.1.4.2
S6.8.5.6 *Headlamp photometry measurements*	SAE J575, Dec 1988, 4.6.3
S6.8.5.6.1 *Seasoning and test voltage*	SAE J1383, Apr 1985, 4.1.4.1
S6.8.5.6.1 *Seasoning and test voltage*	SAE J1383, Apr 1985, 4.1.4.3
S6.8.5.6.1 *Seasoning and test voltage*	SAE J575, Dec 1988, 4.6.3.4
S6.8.5.6.2 *Aiming*	S7.2(d)
S6.8.5.6.2 *Aiming*	S7.3.7(b)
S6.8.5.6.2 *Aiming*	S7.8.5.2(d)(1)
S6.8.5.6.2 *Aiming*	S7.8.5.3(e)(2)
S6.8.5.6.2(a) *Aiming-mechanical*	SAE J1383, Apr 1985, 4.1.4.3
S6.8.5.6.2(b) *Aiming-VHAD*	S7.8.5.2(d)(1)
S6.8.5.6.2(c) *Aiming-LB VOL/VOR vertical*	S7.8.5.3(e)(2)
S6.8.5.6.2(c) *Aiming-LB VOL/VOR vertical*	S7.8.5.3(a)(1)
S6.8.5.6.2(d) *Aiming-LB VOL/VOR horizontal*	S7.8.5.3(b)
S6.8.5.6.2(e) *Aiming-UB VOL/VOR vertical*	S7.8.5.3(e)(2)
S6.8.5.6.2(e) *Aiming-UB VOL/VOR vertical*	S7.8.5.3(c)(1)
S6.8.5.6.2(e) *Aiming-UB VOL/VOR vertical*	S7.8.5.3(c)(2)
S6.8.5.6.2(f) *Aiming-UB VOL/VOR horizontal*	S7.8.5.3(d)(1)
S6.8.5.6.2(f) *Aiming-UB VOL/VOR horizontal*	S7.8.5.3(d)(2)
S6.8.5.6.2(f) *Aiming-UB VOL/VOR horizontal*	S7.8.5.3(d)(3)
S6.8.5.6.2(g) *Aiming-Simultaneous aim*	S10(a)
S6.8.5.6.2(g) *Aiming-Simultaneous aim*	S10(b)
S6.8.5.6.2(h) *Aiming-Moveable reflector*	S7.8.2.2
S6.8.5.6.2(h) *Aiming-Moveable reflector*	S7.8.3
S6.8.5.6.2(h) *Aiming-Moveable reflector*	S7.8.4
S6.8.5.6.2(i) *Aiming-Motorcycle UB*	S7.9.3
S6.8.5.6.2(i) *Aiming-Motorcycle UB*	SAE J584, Oct 1993
S6.8.5.6.2(j) *Aiming-Motorcycle LB*	SAE J584, Apr 1964
S6.8.5.6.3 *Positioner*	SAE J575, Dec 1988, 4.6.2.1
S6.8.5.6.4 *Photometer*	SAE J575, Dec 1988, 4.6.2.2
S6.8.5.6.4 *Photometer*	SAE J575, Dec 1988, 4.6.2.3
S6.8.5.6.4 *Photometer*	SAE J575, Dec 1988, 4.6.2.3.1
S6.8.5.6.5 *Location of test points*	S7.2(d)
S6.8.5.6.5 *Location of test points*	SAE J575, Dec 1988, 4.6.3.3
S6.8.5.6.6 *Beam contributor photometry*	S7.4(a)(3)
S7.1.1.1 *Front turn signal lamp photometry*	S5.1.1.7
S7.1.1.1 *Front turn signal lamp photometry*	SAE J1395, Apr 1985, Table 1
S7.1.1.1 *Front turn signal lamp photometry*	SAE J588, Nov 1984, Table 1
S7.1.1.2 *Spacing to other lamps*	SAE J1395, Apr 1985, 5.1.5.4
S7.1.1.2 *Spacing to other lamps*	SAE J588, Nov 1984, 5.1.5.4
S7.1.1.2.1 *Spacing measurement for non reflector lamps*	SAE J1395, Apr 1985, 5.1.5.5
S7.1.1.2.1 *Spacing measurement for non reflector lamps*	SAE J588, Nov 1984, 5.1.5.4.1
S7.1.1.2.2 *Spacing measurement for lamps with reflectors*	SAE J1395, Apr 1985, 5.1.5.6
S7.1.1.2.2 *Spacing measurement for lamps with reflectors*	SAE J588, Nov 1984, 5.1.5.4.2
S7.1.1.2.3 *Spacing based photometric multipliers*	S5.3.1.7
S7.1.1.2.3 *Spacing based photometric multipliers*	SAE J1395, Apr 1985, Table 2
S7.1.1.2.3 *Spacing based photometric multipliers*	SAE J588, Nov 1984, Table 2
S7.1.1.3 *Multiple compartments and multiple lamps*	SAE J588, Nov 1984 5.1.5.2
S7.1.1.3.1 *Lamps installed on vehicles 2032 mm or more in overall width*	S5.1.1.12
S7.1.1.3.2 *Ratio to parking lamps*	SAE J588, Nov 1984, 5.1.5.3

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S7.1.1.3.2 *Ratio to parking lamps and clearance lamps*	SAE J1395, Apr 1985, 5.1.5.2
S7.1.2.1 *Rear turn signal lamp photometry*	S5.1.1.7
S7.1.2.1 *Rear turn signal lamp photometry*	SAE J1395, Apr 1985, Table 1
S7.1.2.1 *Rear turn signal lamp photometry*	SAE J588, Nov 1984, Table 1
S7.1.2.2 *Multiple compartments and multiple lamps*	SAE J588, Nov 1984, 5.1.5.2
S7.1.2.2.1 *Lamps installed on vehicles 2032 mm or more in overall width*	S5.1.1.12
S7.1.2.3 *Ratio to taillamps*	SAE J588, Nov 1984, 5.1.5.3
S7.1.2.3 *Ratio to taillamps and clearance lamps*	SAE J1395, Apr 1985, 5.1.5.2
S7.1.3 *Turn signal lamp physical tests*	S5.1.2
S7.1.3 *Turn signal lamp physical tests*	S5.1.2
S7.1.3 *Turn signal lamp physical tests*	S5.1.5
S7.1.3 *Turn signal lamp physical tests*	S6.2
S7.1.3 *Turn signal lamp physical tests*	S6.2
S7.1.3 *Turn signal lamp physical tests*	SAE J1395, Apr 1985, 4
S7.1.3 *Turn signal lamp physical tests*	SAE J588, Nov 1984, 4
S7.1.4 *Combined lamp bulb indexing*	SAE J1395, Apr 1985, 5.3.1
S7.1.4 *Combined lamp bulb indexing*	SAE J588, Nov 1984, 5.3.1
S7.2.1 *Taillamp photometry*	Figure 1a
S7.2.1 *Taillamp photometry*	Figure 1b
S7.2.1 *Taillamp photometry*	Figure 1c
S7.2.1 *Taillamp photometry*	S5.1.1.6
S7.2.1.1 *Multiple compartments and multiple lamps*	SAE J585e, Sep 1977, 3.1
S7.2.1.1.1 *Lamps installed on vehicles 2032 mm or more in overall width*	SAE J585e, Sep 1977, 3.1
S7.2.2 *Taillamp physical tests*	S5.1.2
S7.2.2 *Taillamp physical tests*	S5.1.5
S7.2.2 *Taillamp physical tests*	S6.2
S7.2.2 *Taillamp physical tests*	SAE J585e, Sep 1977, 3
S7.3.1 *Stop lamp photometry*	S5.1.1.22
S7.3.1 *Stop lamp photometry*	SAE J1398, May 1985, Table 1
S7.3.1 *Stop lamp photometry*	SAE J586, Feb 1984, Table 1
S7.3.1.1 *Multiple compartments and multiple lamps*	SAE J586, Feb 1984, 5.1.5.2
S7.3.1.1.1 *Lamps installed on vehicles 2032 mm or more in overall width*	S5.1.1.12
S7.3.1.2 *Ratio to taillamps*	SAE J1398, May 1985, 5.1.5.2
S7.3.1.2 *Ratio to taillamps*	SAE J586, Feb 1984, 5.1.5.3
S7.3.2 *Stop lamp physical tests*	S5.1.2
S7.3.2 *Stop lamp physical tests*	S5.1.5
S7.3.2 *Stop lamp physical tests*	S6.2
S7.3.2 *Stop lamp physical tests*	SAE J1398, May 1985, 5
S7.3.2 *Stop lamp physical tests*	SAE J586, Feb 1984, 5
S7.3.3 *Combined lamp bulb indexing*	SAE J586, Feb 1984, 5.3.1
S7.4.1 *Inboard photometry*	S5.1.1.8
S7.4.1 *Side marker lamp photometry*	SAE J592e, Jul 1972, Table 1
S7.4.1.1 *Side marker lamp inboard photometry*	S5.1.1.3
S7.4.1.1 *Side marker lamp inboard photometry*	SAE J592e, Jul 1972, Table 1, Footnote b
S7.4.2 *Side marker lamp physical tests*	S5.1.2
S7.4.2 *Side marker lamp physical tests*	S5.1.5
S7.4.2 *Side marker lamp physical tests*	S6.2
S7.4.2 *Side marker lamp physical tests*	SAE J592e, Jul 1972, 3
S7.5.1 *Clearance and identification lamp photometry*	SAE J592e, Jul 1972, Table 1
S7.5.2 *Clearance and identification lamp physical tests*	S5.1.2
S7.5.2 *Clearance and identification lamp physical tests*	S5.1.5
S7.5.2 *Clearance and identification lamp physical tests*	S6.2
S7.5.2 *Clearance and identification lamp physical tests*	SAE J592e, Jul 1972, 3
S7.6.1 *Backup lamp photometry*	Figure 2
S7.6.2 *Color*	SAE J593c, Feb 1968
S7.6.3 *Backup lamp physical tests*	S5.1.2
S7.6.3 *Backup lamp physical tests*	S5.1.5
S7.6.3 *Backup lamp physical tests*	S6.2

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S7.6.3 *Backup lamp physical tests*	SAE J593c, Feb 1968
S7.7.1 *License plate lamp installation*	SAE J587, Oct 1981, 6.3
S7.7.1.1 *Incident light from a single lamp*	SAE J587, Oct 1981, 6.5
S7.7.1.2 *Incident light from multiple lamps*	SAE J587, Oct 1981, 6.6
S7.7.2 *License plate lamp photometry*	SAE J587, Oct 1981, 7
S7.7.3 *License plate lamp physical tests*	S5.1.2
S7.7.3 *License plate lamp physical tests*	S5.1.5
S7.7.3 *License plate lamp physical tests*	S6.2
S7.7.3 *License plate lamp physical tests*	SAE J587, Oct 1981, 3
S7.7.3 *License plate lamp physical tests*	SAE J587, Oct 1981, 4
S7.7.3 *License plate lamp physical tests*	SAE J587, Oct 1981, 5
S7.8.1 *Parking lamp photometry*	Figure 1a
S7.8.1 *Parking lamp photometry*	Figure 1b
S7.8.1 *Parking lamp photometry*	Figure 1c
S7.8.1 *Parking lamp photometry*	S5.1.1.6
S7.8.2 *Parking lamp physical tests*	S5.1.2
S7.8.2 *Parking lamp physical tests*	S5.1.5
S7.8.2 *Parking lamp physical tests*	S6.2
S7.8.2 *Parking lamp physical tests*	SAE J222, Dec 1970, 3
S7.9.1 *High mounted stop lamp accessibility*	S5.1.1.27(a)(5)
S7.9.1 *High mounted stop lamp accessibility*	S5.1.1.27(b)(4)
S7.9.2 *Interior mounting*	S5.3.1.8(a)(3)
S7.9.2 *High mounted stop lamp photometry*	Figure 10
S7.9.2 *High mounted stop lamp photometry*	S5.1.1.27(a)(3)
S7.9.2 *High mounted stop lamp photometry*	S5.1.1.27(b)(3)
S7.9.3 *High mounted stop lamp physical tests*	S5.1.1.27(a)(4)
S7.9.3 *High mounted stop lamp physical tests*	S5.1.2
S7.9.3 *High mounted stop lamp physical tests*	S6.2
S7.9.3 *High mounted stop lamp physical tests*	SAE J186a, Sep 1977, 3
S7.9.3 *High mounted stop lamp physical tests*	S5.1.5
S7.10.1 *Reflex reflector photometry*	SAE J594f, Jan 1977, Table 1
S7.10.1 *Reflex reflector photometry*	SAE J594f, Jan 1977, Table 1A
S7.10.1.1 *Alternative side reflex reflectors*	S5.1.1.29
S7.10.1.1 *Alternative side reflex reflectors*	S5.1.1.4
S7.10.2 *Reflex reflector physical tests*	S5.1.2
S7.10.2 *Reflex reflector physical tests*	S5.1.5
S7.10.2 *Reflex reflector physical tests*	S6.2
S7.10.2 *Reflex reflector physical tests*	SAE J594f, Jan 1977, 3
S7.11.1 *Daytime running lamp (DRL) photometry*	S5.5.11(a)(1)
S7.11.1 *Daytime running lamp (DRL) photometry*	S5.5.11(a)(4)
S7.11.2 *Spacing to turn signal lamps*	S5.5.11(a)(4)
S7.11.2.1 *Optically combined with turn signal lamp*	S5.5.11(a)(5)
S7.11.2.2 *Not optically combined with turn signal lamp*	S5.5.11(a)(4)
S7.11.3 *Daytime running lamp (DRL) physical tests*	S5.1.2
S7.11.3 *Daytime running lamp (DRL) physical tests*	S5.1.5
S7.11.3 *Daytime running lamp (DRL) physical tests*	S5.5.11(a)(3)
S7.12 *Conspicuity systems*	S5.7
S7.12.1 *Retroreflective sheeting*	S5.7.1.1
S7.12.1 *Retroreflective sheeting*	S5.7.1.2
S7.12.1 *Retroreflective sheeting*	S5.7.1.3(d)
S7.12.1 *Retroreflective sheeting*	S5.7.3
S7.12.1.1 *Certification marking*	S5.7.1.5
S7.12.1.2 *Retroreflective sheeting photometry*	Figure 29
S7.12.1.2 *Retroreflective sheeting photometry*	S5.7.1.2
S7.12.2 *Conspicuity reflex reflectors*	S5.7.2
S7.12.2.1 *Certification marking*	S5.7.2.3
S7.12.2.2 *Conspicuity reflex reflector photometry*	S5.7.2.1
S7.13.1 *School bus signal lamp photometry*	S5.1.4(b)

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S7.13.1 *School bus signal lamp photometry*	SAE J887, Jul 1964, Table 1
S7.13.2 *School bus signal lamp physical tests*	S5.1.2
S7.13.2 *School bus signal lamp physical tests*	S5.1.5
S7.13.2 *School bus signal lamp physical tests*	S6.2
S7.13.2 *School bus signal lamp physical tests*	SAE J887, Jul 1964
S7.14 *Associated equipment*	Table I
S7.14 *Associated equipment*	Table III
S7.14.1 *Turn signal operating unit*	S5.1.1.5
S7.14.1 *Turn signal operating unit*	SAE J589, Apr 1964
S7.14.2 *Turn signal flasher*	SAE J590b, Oct 1965
S7.14.3 *Turn signal pilot indicator*	S5.5.6
S7.14.3 *Turn signal pilot indicator*	SAE J588e, Sep 1970
S7.14.3.1 *Indicator size and color*	SAE J588e, Sep 1970
S7.14.3.2 *Turn signal lamp failure*	S5.5.6
S7.14.4 *Headlamp beam switching device*	S5.5.1
S7.14.4 *Headlamp beam switching device*	SAE J564a, Apr 1964
S7.14.4.1 *Semi-automatic headlamp beam switching device*	S5.5.1
S7.14.4.1 *Semi-automatic headlamp beam switching device*	SAE J565b, Feb 1969
S7.14.4.1.1 *Operating instructions*	SAE J565b, Feb 1969, 2
S7.14.4.1.2 *Manual override*	SAE J565b, Feb 1969, 4.4
S7.14.4.1.3 *Fail safe operation*	SAE J565b, Feb 1969, 4.6
S7.14.4.1.4 *Automatic dimming indicator*	SAE J565b, Feb 1969, 4.13
S7.14.4.1.5 *Lens accessibility*	SAE J565b, Feb 1969, 4.16
S7.14.4.1.6 *Mounting height*	SAE J565b, Feb 1969, 4.17
S7.14.5 *Upper beam headlamp indicator*	S5.5.2
S7.14.5.1 *Indicator size and location*	S5.5.2
S7.14.5.1 *Indicator size and location*	SAE J564a, Apr 1964
S7.14.6 *Vehicular hazard warning signal operating unit*	SAE J910, Jan 1966, 1
S7.14.6 *Vehicular hazard warning signal operating unit*	SAE J910, Jan 1966, 3(a)
S7.14.6 *Vehicular hazard warning signal operating unit*	SAE J910, Jan 1966, 3(b)
S7.14.6 *Vehicular hazard warning signal operating unit*	SAE J910, Jan 1966, 3(d)
S7.14.6.1 *Operating unit switch*	S5.5.5
S7.14.6.1 *Operating unit switch*	SAE J910, Jan 1966, 3(c)
S7.14.6.1 *Operating unit switch*	SAE J910, Jan 1966, 3(e)
S7.14.7 *Vehicular hazard warning signal flasher*	SAE J945, Feb 1966
S7.14.8 *Vehicular hazard warning signal pilot indicator*	SAE J910, Jan 1966, 5
S7.14.8 *Vehicular hazard warning signal pilot indicator*	SAE J945, Feb 1966
S7.14.8.1 *Indicator size and color*	SAE J910, Jan 1966, 5
S8.1 *Headlighting systems*	S7.1
S8.1 *Headlighting systems*	S7.9.2(b)
S8.1.1 *Headlighting system type*	S7.3
S8.1.1 *Headlighting system type*	S7.4
S8.1.1 *Headlighting system type*	S7.5
S8.1.1 *Headlighting system type*	S7.6
S8.1.2 *Headlamp category*	S7.3
S8.1.2 *Headlamp category*	S7.4
S8.1.2 *Headlamp category*	S7.5
S8.1.2 *Headlamp category*	S7.6
S8.1.3 *Vertical headlamp arrangement*	S7.4(b)
S8.1.3 *Vertical headlamp arrangement*	S7.5(d)
S8.1.4 *Horizontal headlamp arrangement*	S7.4(b)
S8.1.4 *Horizontal headlamp arrangement*	S7.5(d)
S8.1.5 *Headlamp adjustments*	SAE J566, Jan 1960, 1
S8.1.5 *Headlamp adjustments*	SAE J566, Jan 1960, 2
S8.1.5 *Headlamp adjustments*	SAE J566, Jan 1960, 3
S8.2 *Simultaneous beam activation*	S5.5.8
S8.2 *Simultaneous beam activation*	S7.4(a)(1)(ii)

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S9 *Sealed beam headlamps*	S7.3
S9.1 *Sealed beam headlamp installation*	S7.3.2
S9.1 *Sealed beam headlamp installation*	S7.3.3
S9.1 *Sealed beam headlamp installation*	S7.3.4
S9.1 *Sealed beam headlamp installation*	S7.3.5
S9.1 *Sealed beam headlamp installation*	S7.3.6
S9.1 *Sealed beam headlamp installation*	S7.3.7
S9.1 *Sealed beam headlamp installation*	S7.3.8
S9.1 *Sealed beam headlamp installation*	S7.3.9
S9.2 *Type F sealed beam headlamp simultaneous aim*	S7.3.7(h)
S9.2 *Type F sealed beam headlamp simultaneous aim*	S7.3.7(h)(1)
S9.2 *Type F sealed beam headlamp simultaneous aim*	S7.3.7(h)(2)
S9.3 *Sealed beam headlamp photometry*	S7.3.2(a)(3)
S9.3 *Sealed beam headlamp photometry*	S7.3.3(a)
S9.3 *Sealed beam headlamp photometry*	S7.3.4
S9.3 *Sealed beam headlamp photometry*	S7.3.5(a)
S9.3 *Sealed beam headlamp photometry*	S7.3.6(a)
S9.3 *Sealed beam headlamp photometry*	S7.3.7(b)
S9.3 *Sealed beam headlamp photometry*	S7.3.8(b)
S9.3 *Sealed beam headlamp photometry*	S7.3.9(a)
S9.3 *Sealed beam headlamp photometry*	S7.3.2(c)
S9.3 *Sealed beam headlamp photometry*	S7.3.2(d)
S9.3 *Sealed beam headlamp photometry*	S7.3.3(b)
S9.3 *Sealed beam headlamp photometry*	S7.3.5(b)
S9.3 *Sealed beam headlamp photometry*	S7.3.6(b)
S9.3 *Sealed beam headlamp photometry*	S7.3.7(g)
S9.3 *Sealed beam headlamp photometry*	S7.3.7(i)
S9.3 *Sealed beam headlamp photometry*	S7.3.8(d)
S9.3 *Sealed beam headlamp photometry*	S7.3.8(e)
S9.3 *Sealed beam headlamp photometry*	S7.3.9(b)
S9.3 *Sealed beam headlamp photometry*	SAE J1383, Apr 1985, 4.2
S9.3 *Sealed beam headlamp photometry*	SAE J1383, Apr 1985, 4.3
S9.3 *Sealed beam headlamp photometry*	SAE J580, Dec 1986, 4.1.2
S9.3 *Sealed beam headlamp photometry*	SAE J580, Dec 1986, 4.2
S9.3 *Sealed beam headlamp photometry*	SAE J580, Dec 1986, 4.3
S9.3 *Sealed beam headlamp photometry*	SAE J580, Dec 1986, 4.4
S9.3 *Sealed beam headlamp photometry*	SAE J580, Dec 1986, 4.5
S10.1 *Integral beam headlamp installation*	S7.4
S10.1 *Integral beam headlamp installation*	S7.4(a)
S10.2 *Integral beam headlamp aimability*	S7.4(f)
S10.3 *Integral beam headlamp simultaneous aim*	S7.4(d)
S10.4 *Markings*	S7.4(c)(1)
S10.4 *Markings*	S7.4(c)(2)
S10.5 *Additional light sources*	S7.4(i)
S10.6 *Integral beam headlamp photometry*	S7.4(a)
S10.6 *Integral beam headlamp photometry*	S7.4(g)
S10.6 *Integral beam headlamp photometry*	S7.4(h)
S11.1 *Replaceable bulb headlamp installation*	S7.5(a)
S11.2 *Replaceable bulb headlamp aiming restrictions*	S7.5(d)(1)
S11.2 *Replaceable bulb headlamp aiming restrictions*	S7.5(e)(1)
S11.2 *Replaceable bulb headlamp aiming restrictions*	S7.5(h)
S11.3 *Additional light sources*	S7.5(j)
S11.4 *Replacement equipment*	S7.5(f)
S11.5 *Markings*	S7.5(d)(3)(i)(B)
S11.5 *Markings*	S7.5(d)(3)(ii)(B)

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S11.5 *Markings*	S7.5(e)(3)(i)
S11.5 *Markings*	S7.5(e)(3)(ii)
S11.6 *Replaceable bulb headlamp photometry*	S7.5(b)
S11.7 *Replaceable bulb headlamp physical tests*	S7.5(i)
S12 *Combination headlamps*	S7.6
S12.1 *Combination headlamp installation*	S7.6.1
S12.2 *Combination headlamp photometry*	S7.6.2
S12.2 *Combination headlamp photometry*	S7.6.2.1
S12.2 *Combination headlamp photometry*	S7.6.2.2
S12.2 *Combination headlamp photometry*	S7.6.3
S12.3 *Combination headlamp physical tests*	S7.4(g)
S13 *Motorcycle headlamps*	S7.9.2
S13.1 *Motorcycly headlamp installation*	S7.9.6.1
S13.1.1 *Single headlamp*	S7.9.6.2(a)
S13.1.2 *Two headlamps with both beams*	S7.9.6.2(b)
S13.1.3 *Two headlamps, upper beam and lower beam*	S7.9.6.2(c)
S13.2 *Motorcycle headlamp photometry*	S7.9.2(a)
S13.3 *Motorcycle headlamp physical tests*	SAE J584, Apr 1964
S13.4 *Motorcycle replaceable bulb headlamp marking*	S7.9.5
S13.5 *Motorcycle headlamp modulation system*	S7.9.4.1
S13.5.1(a) *Rate*	S7.9.4.1(a)
S13.5.1(b) *Maximum power*	S7.9.4.1(b)
S13.5.1(c) *Minimum intensity*	S7.9.4.1(c)
S13.5.1(d) *Wiring*	S7.9.4.1(d)
S13.5.1(e) *Failure mode*	S7.9.4.1(e)
S13.5.1(f) *Sensor*	S7.9.4.1(f)
S13.5.1(g) *Voltage drop*	S7.9.4.1(g)
S13.5.1(h) *Full voltage operation*	S7.9.4.1(h)
S13.5.2 *Replacement modulators*	S7.9.4.2(a)
S13.5.2.1 *Replacement performance*	S7.9.4.2(a)
S13.5.2.2 *Replacement instructions*	S7.9.4.2(b)
S14.1 *Headlamp mounting and aiming*	S7.8.2
S14.2 *Headlamp obstructions*	S7.8.5
S14.3 *Headlamp aiming systems*	S7.8.5
S14.4 *Aim adjustment interaction*	S7.8.2.1(a)
S14.4 *Aim adjustment interaction*	S7.8.2.1(b)
S14.4.1 Excess aim interaction	S7.8.5.2(b)(3)
S14.5 *Horizontal adjustment-visually aimed headlamp*	S7.8.2.1(c)
S14.6.1 *Optical axis marking-vehicle*	S7.8.1(b)
S14.6.2 *Optical axis marking-headlamp*	S7.8.1(a)
S14.6.3 *Optical axis marking-visual aim headlamp*	S7.8.1(c)
S14.6.3 *Optical axis marking-visual aim headlamp*	S7.8.5.3(f)(1)
S14.7 *Moveable reflectors*	S7.8.2.2(a)
S14.7 *Moveable reflectors*	S7.8.2.2(b)
S14.8 *External aiming*	S7.8.5.1
S14.8.1 *Headlamp aiming device locating plates*	S7.8.5.1(d)
S14.8.1.1 *Aiming pads*	S7.8.5.1(d)(1)
S14.8.1.2 *Aiming dimension marking*	S7.8.5.1(d)(2)
S14.8.2 *Nonadjustable headlamp aiming device locating plates*	S7.8.5.1(e)
S14.9 *On-vehicle aiming*	S7.8.5.2
S14.9.1 *Aim*	S7.8.5.2(a)
S14.9.1.1 *Vertical aim*	S7.8.5.2(a)(1)
S14.9.1.1.1 *Graduations*	S7.8.5.2(a)(1)(i)
S14.9.1.1.2 *VHAD markings*	S7.8.5.2(a)(1)(ii)

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S14.9.1.1.3 *Graduation scale*	S7.8.5.2(a)(1)(iii)
S14.9.1.1.4 *Vertical indicator range*	S7.8.5.2(a)(1)(iv)
S14.9.1.1.5 *Floor slope compensation*	S7.8.5.2(a)(1)(v)
S14.9.1.1.6 *Graduation legibility*	S7.8.5.2(a)(1)(vi)
S14.9.1.2 *Horizontal aim*	S7.8.5.2(a)(2)
S14.9.1.2.1 *Graduation scale*	S7.8.5.2(a)(2)(i)
S14.9.1.2.2 *Horizontal markings*	S7.8.5.2(a)(2)(ii)
S14.9.1.2.3 *Graduation legibility*	S7.8.5.2(a)(2)(iii)
S14.9.1.2.4 *Horizontal indicator range*	S7.8.5.2(a)(2)(iv)
S14.9.2.1 *Aiming instruction location and content*	S7.8.5.2(b)(1)
S14.9.2.2 *Remote indicator instructions*	S7.8.5.2(b)(2)
S14.9.3 *VHAD permanent calibration*	S7.8.5.2(c)
S14.9.4 *Replacement units*	S7.8.5.2(d)(2)
S14.9.5 *VHAD physical tests*	S7.8.5.2(d)
S14.10 *Visual/optical aiming*	S7.8.5.3
S14.10.1 *Vertical aim, lower beam*	S7.8.5.3(a)
S14.10.1.1 *Vertical position of the cutoff*	S7.8.5.3(a)(1)
S14.10.1.2 *Vertical gradient*	S7.8.5.3(a)(2)
S14.10.1.3 *Horizontal position of the cutoff*	S7.8.5.3(a)(3)
S14.10.1.4 *Maximum inclination of the cutoff*	S7.8.5.3(a)(4)
S14.10.1.5 *Measuring the cutoff parameter*	Interpretation-Spingler 4/6/2000
S14.10.1.5 *Measuring the cutoff parameter*	S7.8.5.3(a)(5)(i)
S14.10.1.5.1 *Test position*	S7.8.5.3(a)(5)(i)
S14.10.1.5.2 *Headlamp aiming*	S7.8.5.3(a)(5)(ii)
S14.10.1.5.3 *Beam scanning*	S7.8.5.3(a)(5)(iii)
S14.10.1.5.4 *Gradient calculation*	S7.8.5.3(a)(5)(iv)
S14.10.2 *Horizontal aim, lower beam*	S7.8.5.3(b)
S14.10.3 *Vertical aim, upper beam*	
S14.10.3.1 *Combined upper and lower beams*	S7.8.5.3(c)(1)
S14.10.3.2 *Upper beam without lower beam*	S7.8.5.3(c)(2)
S14.10.4 *Horizontal aim, upper beam*	
S14.10.4.1 *Combined upper and lower beams*	S7.8.5.3(d)(1)
S14.10.4.2 *Upper beam without lower beam*	S7.8.5.3(d)(2)
S14.10.4.3 *Upper beam without lower beam of VHAD*	S7.8.5.3(d)(3)
S14.10.5 *Photometric measurements*	S7.8.5.3(e)(1)
S14.10.6 *Visual/optical identification marking*	S7.8.5.3(f)(2)(v)
S14.10.6.1 *VOL/VOR/VO markings*	S7.8.5.3(f)(2)(i)
S14.10.6.1 *VOL/VOR/VO markings*	S7.8.5.3(f)(2)(ii)
S14.10.6.1 *VOL/VOR/VO markings*	S7.8.5.3(f)(2)(iv)
S14.10.6.2 *VOR/VO markings on sealed beams*	S7.8.5.3(f)(2)(iii)
S15 *Replaceable light sources*	S7.7
S15.1 *Markings*	S7.7(a)
S15.2 *Power and flux measurement*	S7.7(b)
S15.3 *Power and flux measurement*	S7.7(d)
S15.3.1 *Testing-resistive filament light sources*	S7.7(d)(1)
S15.3.2 *Testing-discharge light sources*	S7.7(d)(2)
S15.4 *Ballast markings*	S7.7(e)
S15.5 *Gas discharge laboratory life*	S7.7(f)
S15.6 *Replaceable light source physical tests*	S7.7(c)
S15.6 *Replaceable light source physical tests*	S7.7(g)
S16 *Headlamp concealment devices*	
S16.1 *Power loss during headlamp use*	S12.1
S16.2 *Manual device actuation*	S12.2
S16.3 *Single step actuation*	S12.3
S16.4 *Headlamp aiming and replacement*	S12.4
S16.5 *Operational temperature range and time limitation*	S12.5

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
S16.6 *ECE compliance alternative*	S12.6
S16.7 *Certification election*	S12.7
S17 *Headlamp markings*	Various
S17.1 *Trademark*	S7.2(b)
S17.2 *Voltage and trade number*	S7.2(c)
S17.3 *Sealed beam headlamp markings*	S5.2.2
S17.3 *Sealed beam headlamp markings*	S5.8.2
S17.3 *Sealed beam headlamp markings*	S7.3.1
S17.3 *Sealed beam headlamp markings*	S7.3.7(f)
S17.3 *Sealed beam headlamp markings*	S7.3.8(f)
S17.3 *Sealed beam headlamp markings*	S7.3.9(c)
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 2.1.1
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 5.3.3
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 5.4.3
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 5.4.4
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 5.4.4.1
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 5.4.4.2
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 5.4.4.3
S17.3 *Sealed beam headlamp markings*	SAE J1383, Apr 1985, 5.4.5
S17.4 *Replaceable bulb headlamp markings*	S7.5(g)
S17.5 *Additional headlamp markings*	New reference to other sections
S18 *Replaceable headlamp lens*	S5.8.1
S18 *Replaceable headlamp lens*	S5.8.11
S18 *Replaceable headlamp lens*	S7.2(e)
Figure 1	SAE J578c, Feb 1977, Figure 1
Figure 2	SAE J590b, Oct 1965, Figure 1
Figure 2	SAE J945, Feb 1966, Figure 1
Figure 3	Figure 4-1
Figure 3	Figure 4-2
Figure 3	Figure 4-3
Figure 3	Figure 4-4
Figure 4	SAE J580, Dec 1986, Figure 1
Figure 5	Figure 5
Figure 6	Figure 6
Figure 7	Figure 7
Figure 8	Figure 8
Figure 9	Figure 9
Figure 10	Figure 25
Figure 11	Figure 30-1
Figure 11	Figure 30-2
Figure 11	Figure 30-3
Figure 11	Figure 30-4
Figure 12-1	New
Figure 12-2	New
Figure 13	Figure 31
Figure 14	Figure 16
Figure 15	Figure 22
Figure 16	SAE J580, Dec 1986, Figure 3
Figure 17	SAE J580, Dec 1986, Figure 4
Figure 18	SAE J580, Dec 1986, Figure 2
Relocate to Part 564, Appendix C	Figure 11
Relocate to Part 564, Appendix C	Figure 12

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Relocate to Part 564, Appendix C	Figure 13
Relocate to Part 564, Appendix C	Figure 14
Relocate to Part 564, Appendix C	Figure 18
Relocate to Part 564, Appendix C	Figure 21
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, 5.3
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 11
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 10
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 13
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 7
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 8
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 5
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 15
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 12
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 14
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 11
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 9
Relocate to Part 564, Appendix C	SAE J1383, Apr 1985, Figure 6
Table I Activation Taillamps	S5.5.10(d)
Table I Activation Taillamps	S5.5.3
Table I Activation Taillamps	S5.5.7(a)
Table I Activation Taillamps	S5.5.7(b)
Table I Activation-Backup lamps	S5.5.10(d)
Table I Activation-Backup lamps	SAE J593c, Feb 1968
Table I Activation-Clearance lamps	S5.5.10(d)
Table I Activation-DRL	S5.5.10(d)
Table I Activation-DRL	S5.5.11(a)
Table I Activation-DRL	S5.5.11(a)(5)
Table I Activation-Headlamp	S5.5.10(b)
Table I Activation-Headlamp	S5.5.8
Table I Activation-Headlamp	S5.5.9
Table I Activation-High mounted stop lamps	S5.5.10(d)
Table I Activation-High mounted stop lamps	S5.5.4
Table I Activation-Identification lamps	S5.5.10(d)
Table I Activation-License plate lamps	S5.5.10(d)
Table I Activation-License plate lamps	S5.5.7(a)
Table I Activation-License plate lamps	S5.5.7(b)
Table I Activation-Motorcycle headlamps	S5.5.10(b)
Table I Activation-Motorcycle headlamps	S5.5.10(c)
Table I Activation-Motorcycle headlamps	S5.5.9
Table I Activation-Parking lamps	S5.5.10(d)
Table I Activation-Parking lamps	S5.5.7(a)
Table I Activation-Parking lamps	S5.5.7(b)
Table I Activation-School bus signal lamps	S5.1.4(b)(ii)
Table I Activation-School bus signal lamps	S5.5.10(a)
Table I Activation-School bus signal lamps	SAE J887, Jul 1964
Table I Activation-Sidemarker lamps	S5.5.10(b)
Table I Activation-Sidemarker lamps	S5.5.10(d)
Table I Activation-Sidemarker lamps	S5.5.7(a)
Table I Activation-Sidemarker lamps	S5.5.7(b)
Table I Activation-Stop lamps	Interpretation-Farber 5/26/00
Table I Activation-Stop lamps	S5.1.1.11
Table I Activation-Stop lamps	S5.5.10(d)
Table I Activation-Stop lamps	S5.5.4
Table I Activation-Turn signals	S5.5.10(a)
Table I Additional Lamps Required on All School Buses except Multifunction School Activity Buses	S5.1.4

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table I Lighting device	S5.1.1.27(a)
Table I Lighting device	S5.1.1.27(b)
Table I Lighting device	S5.1.1.4
Table I Lighting device	S5.5.11(a)
Table I Lighting device	S5.5.11(a)(3)
Table I Lighting device	S5.5.11(b)
Table I Lighting device	Table I
Table I Lighting device	Table II
Table I Lighting device	Table III
Table I Lighting device	Table IV
Table I Mounting height	S5.5.11(b)
Table I Mounting height	Table I
Table I Mounting height	Table II
Table I Mounting height	Table III
Table I Mounting height	Table IV
Table I Mounting Height-Clearance lamps	S5.3.1.4
Table I Mounting location	Table I
Table I Mounting location	Table II
Table I Mounting location	Table III
Table I Mounting location	Table IV
Table I Mounting location-Clearance lamps	S5.3.1.6
Table I Mounting location-Clearance lamps	S5.3.2.1
Table I Mounting location-High mounted stop lamp	S5.3.1.8(a)(1)
Table I Mounting location-Reflex reflectors	S5.3.1.2
Table I Mounting location-Reflex reflectors	S5.3.1.3
Table I Mounting location-Sidemarker lamps	S5.3.1.3
Table I Number and color	S5.1.1.1
Table I Number and color	S5.1.1.10
Table I Number and color	S5.1.1.14
Table I Number and color	S5.1.1.15
Table I Number and color	S5.1.1.2
Table I Number and color	S5.1.1.21
Table I Number and color	S5.5.11(a)(3)
Table I Number and color	Table I
Table I Number and color	Table II
Table I Number and color	Table III
Table I Number and color	Table IV
Table I Number and color-Clearance lamp	S5.1.1.9
Table I Number and color-Intermediate sidemarker lamps	S5.1.1.3
Table I Number and color-School bus signal lamps	S5.1.4(a)
Table I Number and color-School bus signal lamps	S5.1.4(b)(i)
Table II Combination headlamps-2 lamp system	S7.6.2
Table II Combination headlamps-4 lamp system	S7.6.3
Table II Integral beam headlamps-2 lamp system	S7.4(a)(2)
Table II Integral beam headlamps-4 lamp system	S7.4(a)(1)(i)
Table II Integral beam headlamps-4 lamp system U & L	S7.4(a)(1)(iii)
Table II Integral beam headlamps-4 lamp system-simultaneous activation	S7.4(a)(1)(ii)
Table II Integral beam headlamps-beam contributor system	S7.4(a)(3)
Table II Replaceable bulb headlamps-2 lamp system-with HB2	Figure 26
Table II Replaceable bulb headlamps-2 lamp system-with HB2	S7.5(e)
Table II Replaceable bulb headlamps-2 lamp system-without HB2	Figure 26
Table II Replaceable bulb headlamps-2 lamp system-without HB2	S7.5(d)
Table II Replaceable bulb headlamps-4 lamp system-with HB2	Figure 26
Table II Replaceable bulb headlamps-4 lamp system-with HB2	S7.5(e)
Table II Replaceable bulb headlamps-4 lamp system-without HB2	Figure 26
Table II Replaceable bulb headlamps-4 lamp system-without HB2	S7.5(d)
Table II Sealed beam headlamps Type A	S7.3.2

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table II Sealed beam headlamps Type B	S7.3.3
Table II Sealed beam headlamps Type C	S7.3.4
Table II Sealed beam headlamps Type D	S7.3.5
Table II Sealed beam headlamps Type E	S7.3.6
Table II Sealed beam headlamps Type F	S7.3.7
Table II Sealed beam headlamps Type G	S7.3.8
Table II Sealed beam headlamps Type H	S7.3.9
Table II Footnote 1	S5.5.8
Table II Footnote 2	S7.4(d)
Table II Footnote 3	S5.5.8
Table II Footnote 4	S5.5.8
Table II Footnote 5	S5.5.8
Table II Footnote 6	S7.4(a)(3)
Table III Application pattern-Alternating	S5.7.1.3(a)
Table III Application pattern-Alternating	S5.7.1.3(b)
Table III Application pattern-Alternating	S5.7.1.3(c)
Table III Application pattern-Alternating	S5.7.2.2(a)
Table III Application pattern-White	S5.7.2.2(b)
Table III Application location	S5.7.1.4(a)
Table III Application spacing	S5.7.1.4(b)
Table III Application spacing	S5.7.1.4(c)
Table III Trailer rear-Element 1	S5.7.1.4.1(a)
Table III Trailer rear-Element 2	S5.7.1.4.1
Table III Trailer rear-Element 2	S5.7.1.4.1(b)
Table III Trailer rear-Element 3	S5.7.1.4.1
Table III Trailer rear-Element 3	S5.7.1.4.1(c)
Table III Trailer side-Alternating	S5.7.1.4.2(a)
Table III Trailer side-Alternating	S5.7.1.4.2(b)
Table III Truck tractor-Element 1	S5.7.1.4.3(a)
Table III Truck tractor-Element 2	S5.7.1.4.3(b)
Table IV Front turn signal lamp-Effective projected luminous lens area	S5.1.1.25
Table IV Front turn signal lamp-Effective projected luminous lens area	SAE J1395, Apr 1985, 5.3.2
Table IV Front turn signal lamp-Effective projected luminous lens area	SAE J588, Nov 1984, 5.3.2
Table IV High mounted stop lamp-Effective projected luminous lens area	S5.1.1.27(a)(1)
Table IV High mounted stop lamp-Effective projected luminous lens area	S5.1.1.27(b)(1)
Table IV Rear turn signal lamp-Effective projected luminous lens area	S5.1.1.25
Table IV Rear turn signal lamp-Effective projected luminous lens area	S5.1.1.26(a)
Table IV Rear turn signal lamp-Effective projected luminous lens area	S5.1.1.26(b)
Table IV Rear turn signal lamp-Effective projected luminous lens area	SAE J1395, Apr 1985, 5.3.2
Table IV School bus signal lamp-Effective projected luminous lens area	SAE J887, Jul 1964
Table IV Stop lamp-Effective projected luminous lens area	S5.1.1.22
Table IV Stop lamp-Effective projected luminous lens area	S5.1.1.26(a)
Table IV Stop lamp-Effective projected luminous lens area	S5.1.1.26(b)
Table IV Stop lamp-Effective projected luminous lens area	SAE J1398, May 1985, 5.3.2
Table IV Footnote 1	S5.1.1.22
Table V Backup lamp visibility	S5.3.2(e)
Table V High mounted stop lamp visibility	S5.3.2(c)
Table V High mounted stop lamp visibility	S5.3.2(d)
Table V HMSL-Visibility	S5.1.1.27(a)(2)
Table V HMSL-Visibility	S5.1.1.27(b)(2)
Table V Lens area visibility	Figure 19
Table V Lens area visibility	S5.3.2(b)(1)
Table V Luminous intensity visibility	Figure 20
Table V Luminous intensity visibility	S5.3.2(b)(2)
Table V SAE stop lamp visibility	SAE J1398, May 1985, 5.4.1

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table V SAE stop lamp visibility	SAE J586, Feb 1984, 5.4.1
Table V SAE taillamp visibility	SAE J585e, Sep 1977, 4
Table V SAE turn signal lamp visibility	SAE J1395, Apr 1985, 5.4.1
Table V SAE turn signal lamp visibility	SAE J588, Nov 1984, 5.4.1
Table V School bus signal lamp visibility	SAE J887, Jul 1964
Table V Footnote 1	New language
Table V Footnote 2	S5.3.2.3
Table V Footnote 3	Figure 19, Footnote 2
Table V Footnote 4	Figure 20, Footnote 2
Table VI Front turn signal lamp-1.5 x base individual point photometry	SAE J1395, Apr 1985, 5.1.5.4
Table VI Front turn signal lamp-1.5 x base individual point photometry	SAE J1395, Apr 1985, Table 2
Table VI Front turn signal lamp-1.5 x base individual point photometry	SAE J588, Nov 1984, 5.1.5.4
Table VI Front turn signal lamp-1.5 x base individual point photometry	SAE J588, Nov 1984, Table 2
Table VI Front turn signal lamp-1.5 x base zone photometry	SAE J1395, Apr 1985, 5.1.5.4
Table VI Front turn signal lamp-1.5 x base zone photometry	SAE J1395, Apr 1985, Table 2
Table VI Front turn signal lamp-1.5 x base zone photometry	SAE J588, Nov 1984, 5.1.5.4
Table VI Front turn signal lamp-1.5 x base zone photometry	SAE J588, Nov 1984, Table 2
Table VI Front turn signal lamp-2 x base individual point photometry	SAE J1395, Apr 1985, 5.1.5.4
Table VI Front turn signal lamp-2 x base individual point photometry	SAE J1395, Apr 1985, Table 2
Table VI Front turn signal lamp-2 x base individual point photometry	SAE J588, Nov 1984, 5.1.5.4
Table VI Front turn signal lamp-2 x base individual point photometry	SAE J588, Nov 1984, Table 2
Table VI Front turn signal lamp-2 x base zone photometry	SAE J1395, Apr 1985, 5.1.5.4
Table VI Front turn signal lamp-2 x base zone photometry	SAE J1395, Apr 1985, Table 2
Table VI Front turn signal lamp-2 x base zone photometry	SAE J588, Nov 1984, 5.1.5.4
Table VI Front turn signal lamp-2 x base zone photometry	SAE J588, Nov 1984, Table 2
Table VI Front turn signal lamp-2.5 x base individual point photometry	S5.3.1.7
Table VI Front turn signal lamp-2.5 x base individual point photometry	SAE J1395, Apr 1985, 5.1.5.4
Table VI Front turn signal lamp-2.5 x base individual point photometry	SAE J1395, Apr 1985, Table 2
Table VI Front turn signal lamp-2.5 x base individual point photometry	SAE J588, Nov 1984, 5.1.5.4
Table VI Front turn signal lamp-2.5 x base individual point photometry	SAE J588, Nov 1984, Table 2
Table VI Front turn signal lamp-2.5 x base zone photometry	S5.3.1.7
Table VI Front turn signal lamp-2.5 x base zone photometry	SAE J1395, Apr 1985, 5.1.5.4
Table VI Front turn signal lamp-2.5 x base zone photometry	SAE J1395, Apr 1985, Table 2
Table VI Front turn signal lamp-2.5 x base zone photometry	SAE J588, Nov 1984, 5.1.5.4
Table VI Front turn signal lamp-2.5 x base zone photometry	SAE J588, Nov 1984, Table 2
Table VI Front turn signal lamp-Base individual point photometry	SAE J1395, Apr 1985, Table 3
Table VI Front turn signal lamp-Base individual point photometry	SAE J588, Nov 1984, Table 3
Table VI Front turn signal lamp-Base zone photometry	SAE J1395, Apr 1985, Table 1
Table VI Front turn signal lamp-Base zone photometry	SAE J588, Nov 1984, Table 1
Table VI Front turn signal lamp-Photometric ratio	SAE J1395, Apr 1985, 5.1.5.2
Table VI Front turn signal lamp-Photometric ratio	SAE J588, Nov 1984, 5.1.5.3
Table VI Footnote 1	SAE J1395, Apr 1985, Table 1, Footnote a
Table VI Footnote 1	SAE J588, Nov 1984, Table 1, Footnote a
Table VI Footnote 2	SAE J575e, Aug 1970, J
Table VI Footnote 3	S5.3.2.3
Table VI Footnote 4	SAE J1395, Apr 1985, 5.1.5.2
Table VII Rear turn signal lamp-Amber lamp individual point photometry	SAE J1395, Apr 1985, Table 3
Table VII Rear turn signal lamp-Amber lamp individual point photometry	SAE J588, Nov 1984, Table 3
Table VII Rear turn signal lamp-Amber lamp zone photometry	SAE J1395, Apr 1985, Table 1
Table VII Rear turn signal lamp-Amber lamp zone photometry	SAE J588, Nov 1984, Table 1
Table VII Rear turn signal lamp-Photometric ratio	SAE J1395, Apr 1985, 5.1.5.2
Table VII Rear turn signal lamp-Photometric ratio	SAE J588, Nov 1984, 5.1.5.3
Table VII Rear turn signal lamp-Red lamp individual point photometry	SAE J1395, Apr 1985, Table 3
Table VII Rear turn signal lamp-Red lamp individual point photometry	SAE J588, Nov 1984, Table 3
Table VII Rear turn signal lamp-Red lamp zone photometry	SAE J1395, Apr 1985, Table 1
Table VII Rear turn signal lamp-Red lamp zone photometry	SAE J588, Nov 1984, Table 1

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table VII Footnote 1	SAE J1395, Apr 1985, Table 1, Footnote a
Table VII Footnote 1	SAE J588, Nov 1984, Table 1, Footnote a
Table VII Footnote 2	SAE J575e, Aug 1970, J
Table VII Footnote 3	S5.3.2.3
Table VII Footnote 4	SAE J1395, Apr 1985, Table 1, Footnote b
Table VII Footnote 4	SAE J588, Nov 1984, Table 1, Footnote b
Table VII Footnote 5	SAE J1395, Apr 1985, Table 1
Table VII Footnote 5	SAE J588, Nov 1984, Table 1
Table VII Footnote 6	S5.1.1.1
Table VII Footnote 6	SAE J1395, Apr 1985, 5.1.5.3
Table VII Footnote 6	SAE J588e, Sep 1970, 3.9.1
Table VII Footnote 7	SAE J1395, Apr 1985, 5.1.5.2
Table VII Footnote 8	SAE J1395, Apr 1985, 5.1.5.2
Table VII Footnote 8	SAE J588, Nov 1984, 5.1.5.3
Table VIII Taillamp-Individual point photometry	Figure 1a
Table VIII Taillamp-Individual point photometry	Figure 1b
Table VIII Taillamp-Individual point photometry	Figure 1c
Table VIII Taillamp-Maximum photometric intensity	Figure 1b, Footnote 1
Table VIII Taillamp-Zone photometry	Figure 1a
Table VIII Taillamp-Zone photometry	Figure 1b
Table VIII Taillamp-Zone photometry	Figure 1c
Table VIII Footnote 1	SAE J575e, Aug 1970, J
Table VIII Footnote 2	S5.1.1.6
Table VIII Footnote 3	S5.3.2.3
Table IX Stop lamp-Individual point photometry	SAE J1398, May 1985, Table 1
Table IX Stop lamp-Individual point photometry	SAE J586, Feb 1984, Table 1
Table IX Motor driven cycle stop lamp zone photometry	S5.1.1.22
Table IX Stop lamp-Photometric ratio	SAE J1398, May 1985, 5.1.5.2
Table IX Stop lamp-Photometric ratio	SAE J586, Feb 1984, 5.1.5.3
Table IX Stop lamp-Zone photometry	SAE J1398, May 1985, Table 1
Table IX Stop lamp-Zone photometry	SAE J586, Feb 1984, Table 1
Table IX Footnote 1	SAE J1398, May 1985, Table 1, Footnote a
Table IX Footnote 1	SAE J586, Feb 1984, Table 1, Footnote a
Table IX Footnote 2	SAE J575e, Aug 1970, J
Table IX Footnote 3	SAE J1398, May 1985, Table 1, Footnote b
Table IX Footnote 3	SAE J586, Feb 1984, Table 1, Footnote b
Table IX Footnote 4	S5.3.2.3
Table IX Footnote 5	Interpretation-Parkyn 6/1/98
Table IX Footnote 5	S5.1.1.22
Table IX Footnote 6	SAE J1398, May 1985, 5.1.5.2
Table IX Footnote 6	SAE J586, Feb 1984, 5.1.5.3
Table IX Footnote 7	SAE J1398, May 1985, 5.1.5.2
Table IX Footnote 7	SAE J586, Feb 1984, 5.1.5.3
Table X Amber side marker lamp photometry	SAE J592e, Jul 1972, Table 1
Table X Red side marker lamp photometry	SAE J592e, Jul 1972, Table 1
Table X Footnote 1	S5.1.1.8
Table X Footnote 1	SAE J592e, Jul 1972, Table 1, Footnote b
Table X Footnote 2	SAE J575d, Aug 1967, J
Table X Footnote 3	S5.3.2.3
Table XI Amber clearance and identification lamp photometry	SAE J592e, Jul 1972, Table 1
Table XI Red clearance and identification lamp photometry	SAE J592e, Jul 1972, Table 1
Table XI Footnote 1	S5.3.2.3
Table XI Footnote 2	SAE J575d, Aug 1967, J
Table XI Footnote 3	SAE J592e, Jul 1972, Table 1, Footnote a

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table XI Footnote 4	S5.3.2.1
Table XII Backup lamp-Maximum photometric intensity	SAE J593c, Feb 1968, Table 1, Footnote c
Table XII Single backup lamp system-Individual point photometry	S5.1.1.18
Table XII Single backup lamp system-Individual point photometry	SAE J593c, Feb 1968, Table 1, Footnote a
Table XII Single backup lamp system-Zone photometry	Figure 2, Footnote 1
Table XII Two backup lamp system-Individual point photometry	S5.1.1.18
Table XII Two backup lamp system-Individual point photometry	SAE J593c, Feb 1968, Table 1, Footnote b
Table XII Two backup lamp system-Zone photometry	Figure 2, Footnote 1
Table XII Footnote 1	SAE J575d, Aug 1967, J
Table XII Footnote 2	Figure 2, Footnote 1
Table XII Footnote 3	Figure 2, Footnote 1
Table XII Footnote 4	S5.1.1.18
Table XIII License plate lamp target locations	SAE J587, Oct 1981, Figure 1
Table XIII License plate lamp target locations	SAE J587, Oct 1981, Figure 2
Table XIV Parking lamp-Individual point photometry	Figure 1a
Table XIV Parking lamp-Individual point photometry	Figure 1b
Table XIV Parking lamp-Individual point photometry	Figure 1c
Table XIV Parking lamp-Maximum photometric intensity	Figure 1b, Footnote 2
Table XIV Parking lamp-Zone photometry	Figure 1a
Table XIV Parking lamp-Zone photometry	Figure 1b
Table XIV Parking lamp-Zone photometry	Figure 1c
Table XIV Footnote 1	SAE J575d, Aug 1967, J
Table XIV Footnote 2	S5.1.1.6
Table XIV Footnote 3	S5.3.2.3
Table XV High mounted stop lamp-Individual point photometry	Figure 10
Table XV High mounted stop lamp-Zone photometry	Figure 10
Table XV Footnote 1	SAE J575e, Aug 1970, J
Table XV Footnote 2	Figure 10, Footnote 2
Table XV Footnote 3	S5.1.1.27(b)(3)
Table XV Footnote 4	Figure 10, Footnote 1
Table XVI Red reflex reflector photometry	SAE J594f, Jan 1977, Table 1
Table XVI Red reflex reflector photometry	SAE J594f, Jan 1977, Table 1A
Table XVI Amber reflex reflector photometry	SAE J594f, Jan 1977, Table 1, Footnote a
Table XVI Amber reflex reflector photometry	SAE J594f, Jan 1977, Table 1A, Footnote a
Table XVI White reflex reflector photometry	SAE J594f, Jan 1977, Table 1, Footnote a
Table XVI White reflex reflector photometry	SAE J594f, Jan 1977, Table 1A, Footnote a
Table XVI Red conspicuity reflex reflector photometry	S5.7.2.1(b)
Table XVI White horizontal conspicuity reflex reflector photometry	S5.7.2.1(c)
Table XVI White vertical conspicuity reflex reflector photometry	S5.7.2.1(d)
Table XVI Red C2 sheeting photometry	Figure 29
Table XVI Red C2 sheeting photometry	S5.7.1.2
Table XVI Red C3 sheeting photometry	Figure 29
Table XVI Red C3 sheeting photometry	S5.7.1.2
Table XVI Red C4 sheeting photometry	Figure 29
Table XVI Red C4 sheeting photometry	S5.7.1.2
Table XVI White C2 sheeting photometry	Figure 29
Table XVI White C2 sheeting photometry	S5.7.1.2
Table XVI White C3 sheeting photometry	Figure 29
Table XVI White C3 sheeting photometry	S5.7.1.2
Table XVI White C4 sheeting photometry	Figure 29
Table XVI White C4 sheeting photometry	S5.7.1.2
Table XVI Footnote 1	S5.3.2.3

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table XVII Amber lamp photometry	S5.1.4(b)
Table XVII Red lamp photometry	SAE J575d, Aug 1967, J
Table XVII School bus signal lamp photometry	SAE J887, Jul 1964, Table 1
Table XVII Footnote 1	S5.3.2.3
Table XVII Footnote 2	SAE J575d, Aug 1967, J
Table XVIII Upper beam #1 photometry	Figure 15-1
Table XVIII Upper beam #1 photometry	Figure 15-2
Table XVIII Upper beam #2 photometry	Figure 17-1
Table XVIII Upper beam #2 photometry	Figure 17-2
Table XVIII Upper beam #3 photometry	Figure 27-1
Table XVIII Upper beam #3 photometry	Figure 27-2
Table XVIII Upper beam #4 photometry	Figure 28-1, Types 1A1, 1C1, and 1G1
Table XVIII Upper beam #4 photometry	Figure 28-2, Types 1A1, 1C1, and 1G1
Table XVIII Upper beam #5 photometry	Figure 28-1, Types 2A1, 2C1, and 2G1
Table XVIII Upper beam #5 photometry	Figure 28-2, Types 2A1, 2C1, and 2G1
Table XVIII Upper beam #6 photometry	Figure 15-1
Table XVIII Upper beam #6 photometry	Figure 15-2
Table XVIII Upper beam #6 photometry	S7.4(a)(1)(ii)
Table XIX 10° U-90°U Test area	Interpretation-Spingler 7/2/99
Table XIX Lower beam #1M photometry	Figure 15-1
Table XIX Lower beam #1V photometry	Figure 15-2
Table XIX Lower beam #2M photometry	Figure 17-1
Table XIX Lower beam #2V photometry	Figure 17-2
Table XIX Lower beam #2V photometry	Figure 28-2, Types 2A1, 2C1 and 2G1
Table XIX Lower beam #3M photometry	Figure 27-1
Table XIX Lower beam #3V photometry	Figure 27-2
Table XIX Lower beam #4M photometry	Figure 28-2, Types 2A1, 2C1, and 2G1
Table XIX Lower beam #4V photometry	Figure 15-2
Table XIX Lower beam #4V photometry	S7.4(a)(1)(ii)
Table XIX Lower beam #5M photometry	Figure 15-1
Table XIX Lower beam #5M photometry	S7.4(a)(1)(ii)
Table XX Motor driven cycle photometry	Figure 32
Table XX Motor driven cycle with single lamp photometry	Figure 32
Table XX Motorcycle photometry	Figure 32
Table XXI Turn signal operating unit-Durability test	S5.1.1.13
Table XXI Turn signal operating unit-Durability test	SAE J589, Apr 1964
Table XXI Vehicular hazard warning signal operating unit-Durability test	SAE J910, Jan 1966, 4
Table XXI Turn signal flasher-Starting time test	S5.1.1.19
Table XXI Turn signal flasher-Starting time test	SAE J590b, Oct 1965, 1
Table XXI Turn signal flasher-Voltage drop test	S5.1.1.20
Table XXI Turn signal flasher-Voltage drop test	SAE J590b, Oct 1965, 2
Table XXI Turn signal flasher-Flash rate and percent current "on" time test	S5.1.1.19
Table XXI Turn signal flasher-Flash rate and percent current "on" time test	SAE J590b, Oct 1965, 3
Table XXI Turn signal flasher-Durability test	SAE J590b, Oct 1965
Table XXI Vehicular hazard warning signal flasher- Starting time test	SAE J945, Feb 1966, 1
Table XXI Vehicular hazard warning signal flasher-Voltage drop test	S5.1.1.20
Table XXI Vehicular hazard warning signal flasher-Voltage drop test	SAE J945, Feb 1966, 2
Table XXI Vehicular hazard warning signal flasher-Flash rate and percent current "on" time test	SAE J945, Feb 1966, 3
Table XXI Vehicular hazard warning signal flasher-Durability test	SAE J945, Feb 1966, 4
Table XXI Semiautomatic headlamp beam switching device-Sensitivity test	SAE J565b, Feb 1969, 4.2
Table XXI Semiautomatic headlamp beam switching device-Voltage regulation test	SAE J565b, Feb 1969, 4.3
Table XXI Semiautomatic headlamp beam switching device-Manual override test	SAE J565b, Feb 1969, 4.4
Table XXI Semiautomatic headlamp beam switching device-Warmup test	SAE J565b, Feb 1969, 4.5

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table XXI Semiautomatic headlamp beam switching device-Temperature test	SAE J565b, Feb 1969, 4.7
Table XXI Semiautomatic headlamp beam switching device-Dust test	SAE J565b, Feb 1969, 4.8
Table XXI Semiautomatic headlamp beam switching device-Corrosion test	SAE J565b, Feb 1969, 4.9
Table XXI Semiautomatic headlamp beam switching device-Vibration test	SAE J565b, Feb 1969, 4.10
Table XXI Semiautomatic headlamp beam switching device-Sunlight test	SAE J565b, Feb 1969, 4.11
Table XXI Semiautomatic headlamp beam switching device-Durability test	SAE J565b, Feb 1969, 4.12
Table XXI Semiautomatic headlamp beam switching device-Return to upper beam test	SAE J565b, Feb 1969, 4.13
Table XXII Vibration test	SAE J575d, Aug 1967, E
Table XXII Vibration test	SAE J575e, Aug 1970, E
Table XXII Moisture test	SAE J575d, Aug 1967, F
Table XXII Moisture test	SAE J575e, Aug 1970, F
Table XXII Dust test	SAE J575d, Aug 1967, G
Table XXII Dust test	SAE J575e, Aug 1970, G
Table XXII Corrosion test	SAE J575d, Aug 1967, H
Table XXII Corrosion test	SAE J575e, Aug 1970, H
Table XXII Out of focus test	SAE J575d, Aug 1967, K
Table XXII Color test	S5.1.5
Table XXII Color test	SAE J578c, Feb 1977
Table XXII Plastic optical material tests	S5.1.2
Table XXII Plastic optical material tests	S5.1.2(a)
Table XXII Plastic optical material tests	S5.1.2(b)
Table XXII Plastic optical material tests	S5.1.2(c)
Table XXII Plastic optical material tests	S5.1.2(d)
Table XXII Plastic optical material tests	S5.1.2(e)
Table XXII Plastic optical material tests	S5.1.2(f)
Table XXII Plastic optical material tests	S5.1.2(g)
Table XXII Plastic optical material tests	SAE J576, Jul 1991
Table XXIII Abrasion test	S7.4(h)(1)
Table XXIII Abrasion test	S8.1
Table XXIII Abrasion test-procedure	S8.2(a)
Table XXIII Abrasion test-procedure	S8.2(b)
Table XXIII Abrasion test-procedure	S8.2(c)
Table XXIII Abrasion test-procedure	S8.2(d)
Table XXIII Abrasion test-procedure	S8.2(e)
Table XXIII Chemical resistance test	S7.4(h)(2)
Table XXIII Chemical resistance test	S8.1
Table XXIII Chemical resistance test-procedure	S8.3(a)
Table XXIII Chemical resistance test-procedure	S8.3(b)
Table XXIII Chemical resistance test-procedure	S8.3(c)
Table XXIII Corrosion test	S7.4(g)
Table XXIII Corrosion test	S7.5(i)
Table XXIII Corrosion test	S7.8.5.1(c)
Table XXIII Corrosion test	SAE J580, Dec 1986, 4.1.2
Table XXIII Corrosion test	SAE J580, Dec 1986, 5.1.1.2
Table XXIII Corrosion test-procedure	SAE J575, Dec 1988, 4.4
Table XXIII Corrosion-connector test	S7.4(h)(3)
Table XXIII Corrosion-connector test-procedure	S8.4(a)
Table XXIII Corrosion-connector test-procedure	S8.4(b)
Table XXIII Corrosion-connector test-procedure	S8.4(c)
Table XXIII Dust test	S7.4(h)(4)
Table XXIII Dust test	S8.1
Table XXIII Dust test	S8.5
Table XXIII Temperature cycle test	S7.4(h)(5)(i)
Table XXIII Temperature cycle test and internal test-procedure	S8.6
Table XXIII Temperature cycle test-procedure	S8.6.1

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table XXIII Internal heat test	S7.4(h)(5)(ii)
Table XXIII Internal heat test	S8.1
Table XXIII Internal heat test-procedure	S8.6.2(a)
Table XXIII Internal heat test-procedure	S8.6.2(b)
Table XXIII Internal heat test-procedure	S8.6.2(c)
Table XXIII Humidity test	S5.8.1
Table XXIII Humidity test	S7.4(h)(6)
Table XXIII Humidity test-procedure	S8.7(a)
Table XXIII Humidity test-procedure	S8.7(b)
Table XXIII Humidity test-procedure	S8.7(c)
Table XXIII Humidity test-procedure	S8.7(d)
Table XXIII Humidity test-procedure	S8.7(e)
Table XXIII Humidity test-procedure	S8.7(f)
Table XXIII Vibration test	S7.3.2(c)
Table XXIII Vibration test	S7.3.7(i)
Table XXIII Vibration test	S7.3.8(d)
Table XXIII Vibration test	S7.4(h)(7)
Table XXIII Vibration test-procedure	S8.8
Table XXIII Vibration test-procedure	SAE J575, Dec 1988, 4.1
Table XXIII Sealing test-procedure	S8.9
Table XXIII Chemical resistance of replaceable lens reflectors test	S8.1
Table XXIII Chemical resistance of replaceable lens reflectors test-procedure	S8.10.1(a)
Table XXIII Chemical resistance of replaceable lens reflectors test-procedure	S8.10.1(b)
Table XXIII Chemical resistance of replaceable lens reflectors test-procedure	S8.10.1(c)
Table XXIII Corrosion resistance of replaceable lens reflectors test	S8.1
Table XXIII Corrosion resistance of replaceable lens reflectors test-procedure	S8.10.2(a)
Table XXIII Corrosion resistance of replaceable lens reflectors test-procedure	S8.10.2(b)
Table XXIII Inward force test	S7.8.5.1(b)
Table XXIII Inward force test-performance requirement	SAE J580, Dec 1986, 5.1.3
Table XXIII Inward force test-procedure	SAE J580, Dec 1986, 4.3
Table XXIII Torque deflection test	S7.3.8(c)(2)
Table XXIII Torque deflection test	S7.8.5.1(a)
Table XXIII Torque deflection test-procedure	SAE J580, Dec 1986, 4.5
Table XXIII Torque deflection test-performance requirement	SAE J580, Dec 1986, 5.1.5
Table XXIII Retaining ring test	S7.3.2(b)
Table XXIII Retaining ring test-performance requirement	SAE J580, Dec 1986, 5.1.6
Table XXIII Headlamp connector test	S7.3.2(b)
Table XXIII Headlamp connector test	SAE J580, Dec 1986, Figure 1
Table XXIII Headlamp connector test-procedure	SAE J580, Dec 1986, 4.4
Table XXIII Headlamp connector test-performance requirement	SAE J580, Dec 1986, 5.1.4
Table XXIII Headlamp wattage test	S7.3.2(d)
Table XXIII Headlamp wattage test	S7.3.3(b)
Table XXIII Headlamp wattage test	S7.3.5(b)
Table XXIII Headlamp wattage test	S7.3.6(b)
Table XXIII Headlamp wattage test	S7.3.7(g)
Table XXIII Headlamp wattage test	S7.3.8(e)
Table XXIII Headlamp wattage test	S7.3.9(b)
Table XXIII Aiming adjustment test-Laboratory	S7.3.7(e)(5)
Table XXIII Aiming adjustment test-Laboratory	S7.4(f)
Table XXIII Aiming adjustment test-Laboratory	S7.5(h)
Table XXIII Aiming adjustment test-Laboratory	S7.8.2.1(c)
Table XXIII Aiming adjustment test-Laboratory	S7.8.2.2(a)
Table XXIII Aiming adjustment test-Laboratory	S7.8.2.2(b)
Table XXIII Aiming adjustment test-Laboratory	S7.8.2.2(c)
Table XXIII Aiming adjustment test-Laboratory	S7.8.2.2(d)
Table XXIII Aiming adjustment test-Laboratory	S7.8.3
Table XXIII Aiming adjustment test-Laboratory	S7.8.4
Table XXIII Aiming adjustment test-Laboratory-procedure	SAE J580, Dec 1986, 4.2

APPENDIX B: FMVSS 108 REWRITE CROSS REFERENCE

FMVSS 108 REWRITE CITATION	CURRENT FMVSS 108 OR INCORPORATED DOCUMENT CITATION
Table XXIII Aiming adjustment test-Laboratory-performance requirement	SAE J580, Dec 1986, 5.1.2.1
Table XXIII Aiming adjustment test-Laboratory-performance requirement	SAE J580, Dec 1986, 5.1.2.2
Table XXIII Aiming adjustment test-On vehicle	S7.8.2.1(a)
Table XXIII Aiming adjustment test-On vehicle	S7.8.2.1(b)
Table XXIII Aiming adjustment test-On vehicle	S7.8.3
Table XXIII Aiming adjustment test-On vehicle-procedure	SAE J580, Dec 1986, 4.2
Table XXIII Deflection test for replaceable light sources	S7.7(g)
Table XXIII Deflection test for replaceable light sources-procedure	S9
Table XXIII Pressure test for replaceable light sources	S7.7(c)
Table XXIII VHAD scale graduation test	S7.8.5.2(d)(3)(i)
Table XXIII VHAD cold scale graduation test	S7.8.5.2(d)(3)(i)
Table XXIII VHAD cold scale graduation test	S7.8.5.2(d)(3)(ii)(A)
Table XXIII VHAD hot scale graduation test	S7.8.5.2(d)(3)(i)
Table XXIII VHAD hot scale graduation test	S7.8.5.2(d)(3)(ii)(B)
Table XXIII VHAD thermal cycle test	S7.8.5.2(d)(3)(i)
Table XXIII VHAD thermal cycle test	S7.8.5.2(d)(3)(ii)(C)
Table XXIII VHAD corrosion test	S7.8.5.2(d)(3)(i)
Table XXIII VHAD corrosion test	S7.8.5.2(d)(3)(ii)(D)
Table XXIII VHAD photometry test	S7.8.5.2(d)(3)(i)
Table XXIII VHAD photometry test	S7.8.5.2(d)(3)(ii)(E)

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APPENDIX C: LIST OF FIGURES

FIGURE NO.	TITLE
1	CHROMATICITY DIAGRAM [SAE J578c, FEB 1977, FIGURE 1].
2	FLASHER PERFORMANCE CHART [SAE J590b, OCT 1965, FIGURE 1].
3	REPLACEABLE BULB HEADLAMP AIM PADS [CURRENT FMVSS 108 FIG. 4–1 TO 4–4].
4	HEADLAMP CONNECTOR TEST SETUP [SAE J580, DEC 1986, FIGURE 1].
5	HEADLAMP ABRASION TEST FIXTURE [CURRENT FMVSS 108 FIGURE 5].
6	THERMAL CYCLE TEST PROFILE [CURRENT FMVSS 108 FIGURE 6].
7	DIRT/AMBIENT TEST SETUP [CURRENT FMVSS108 FIGURE 7].
8	REPLACEABLE BULB DEFLECTION TEST SETUP [CURRENT FMVSS 108 FIGURE 8].
9	ENVIROMENTAL TEST PROFILE [CURRENT FMVSS108 FIGURE 9].
10	HEADLAMP REPLACEABLE BULB PRESSURE TEST SETUP [CURRENT FMVSS108 FIGURE 25].

APPENDIX C: LIST OF FIGURES—Continued

FIGURE NO.	TITLE
11	TRAILER CONSPICUITY TREATMENT EXAMPLES [CURRENT FMVSS108 FIGURES 30–1 TO 30–4].
12–1	TRAILER CONSPICUITY DETAIL I [NEW].
12–2	TRAILER CONSPICUITY DETAIL II [NEW].
13	TRACTOR CONSPICUITY TREATMENT EXAMPLES [CURRENT FMVSS108 FIGURE 31].
14	92 x 150 HEADLAMP AIM DEFLECTION TEST SETUP [CURRENT FMVSS108 FIGURE 16].
15	TYPES G AND H HEADLAMP AIM DEFLECTION TEST SETUP [CURRENT FMVSS108 FIGURE 22].
16	TYPES A AND E HEADLAMP AIM DEFLECTION TEST SETUP [SAE J580, DEC 1986, FIGURE 3].
17	TYPE B HEADLAMP AIM DEFLECTION TEST SETUP [SAE J580, DEC 1986, FIGURE 4].
18	TYPES C AND D HEADLAMP AIM DEFLECTION TEST SETUP [SAE J580, DEC 1986, FIGURE 2].

Figures to Incorporate in 49 CFR Part 564 Appendix C

LF HEADLAMP DIMENSIONAL INFORMATION [CURRENT FMVSS 108 FIGURE 11]

UF HEADLAMP DIMENSIONAL INFORMATION [CURRENT FMVSS 108 FIGURE 12]

LF/UF MOUNTING FEATURES [CURRENT FMVSS 108 FIGURE 13]

LF/UF MOUNTING RING [CURRENT FMVSS 108 FIGURE 14]

TYPE G & H HEADLAMP DIMENSIONAL INFORMATION [CURRENT FMVSS 108 FIGURE 18]

TYPE G & H HEADLAMP MOUNTING INFORMATION [CURRENT FMVSS 108 FIGURE 21]

TYPE 1A1 HEADLAMP DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 11]

TYPE 2A1 HEADLAMP DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 10]

TYPE 2B1 HEADLAMP DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 13]

TYPE 1C1 HEADLAMP DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 7]

TYPE 2C1 HEADLAMP DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 8]

TYPE 2D1 HEADLAMP DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 5]

TYPE 2E1 HEADLAMP DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 15]

TYPES 1A1, 2A1, AND 2E1 HEADLAMP MOUNTING RING/LAMP BODY DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 12]

TYPE 2B1 HEADLAMP MOUNTING RING/LAMP BODY DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 14]

TYPES 1C1 AND 2C1 HEADLAMP MOUNTING RING/LAMP BODY DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 9]

TYPE 2D1 HEADLAMP MOUNTING RING/LAMP BODY DIMENSIONAL INFORMATION [SAE J1383, APR 1985, FIGURE 6]

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Part III

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule on Auditing Standard No. 4 Reporting on Whether a Previously Reported Material Weakness Continues to Exist; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52990; File No. PCAOB–2005–01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule on Auditing Standard No. 4, Reporting on Whether a Previously Reported Material Weakness Continues to Exist

December 21, 2005.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on July 28, 2005, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rules described in Items I and II below, which items have been prepared by the Board and are presented here in the form submitted by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On July 26, 2005, the Board adopted Auditing Standard No. 4, *Reporting on Whether a Previously Reported Material Weakness Continues to Exist.* The text of the proposed rules is as follows:

Auditing Standard No. 4—Reporting on Whether a Previously Reported Material Weakness Continues to Exist

Table of Contents—(Paragraph)

Applicability of Standard—1–4
Auditor's Objective in an Engagement to Report on Whether a Previously Reported Material Weakness Continues to Exist—5–6
Conditions for Engagement Performance—7–8
Framework and Definitions for Evaluation—9–17
Performing an Engagement to Report on Whether a Previously Reported Material Weakness Continues to Exist—18–43
Applying the Standards of the PCAOB—19–23
Planning the Engagement—24
Obtaining an Understanding of Internal Control Over Financial Reporting—25–27
Testing and Evaluating Whether a Material Weakness Continues to Exist—28–35
Using the Work of Others—36–39
Opinions Based, in Part, on the Work of Another Auditor—40
Forming an Opinion on Whether a Previously Reported Material Weakness Continues to Exist—41–43
Requirement for Written Representations—44–46
Documentation Requirements—47
Reporting on Whether a Previously Reported Material Weakness Continues To Exist—48–64
Management's Report—48
Auditor's Evaluation of Management's Report—49–50
Auditor's Report—51–60
Report modifications—54–55
Other material weaknesses reported previously by the company as part of the company's annual assessment of internal control are not addressed by the auditor's opinion—56
Subsequent events—57–58
Management's report includes additional information—59–60
Special Considerations When a Previously Reported Material Weakness Continues to Exist—61–64
Effective Date—65
Appendix A—Illustrative Reports on Whether a Previously Reported Material Weakness Continues to Exist
Appendix B—Background and Basis for Conclusions

Auditing and Related Professional Practice Standards

Auditing Standard—Reporting on Whether a Previously Reported Material Weakness Continues to Exist

Applicability of Standard

1. This standard establishes requirements and provides direction that apply when an auditor is engaged to report on whether a previously reported material weakness in internal control over financial reporting (hereinafter referred to as a material weakness) continues to exist as of a date specified by management.

Note 1: In this context, *previously reported material weakness* means a material weakness that was described previously in an auditor's report issued pursuant to Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements.*

Note 2: The date specified by management as the date that the previously reported material weakness no longer exists must be a date after the date of management's most recent annual assessment.

2. An auditor may conduct an engagement to report on whether a previously reported material weakness continues to exist if (1) the auditor has audited the company's financial statements and internal control over financial reporting in accordance with Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements,* as of the date of the company's most recent annual assessment of internal control over financial reporting, or (2) the auditor has been engaged to perform an audit of the financial statements and internal control over financial reporting in accordance with Auditing Standard No. 2 in the current year and has a sufficient basis for performing this engagement. (*See* paragraph 26 of this standard for additional requirements that apply specifically to a successor auditor's application of this standard.)

Note: References in this standard to the company's most recent annual assessment of internal control over financial reporting apply to the company's most recent assessment of internal control over financial reporting overall, either as of the company's year-end or as of a more recent interim date, as audited by the auditor in accordance with Auditing Standard No. 2.

3. The auditor may report on more than one previously reported material weakness as part of a single engagement.

4. The engagement described by this standard is voluntary. The standards of the PCAOB do not require an auditor to undertake an engagement to report on whether a previously reported material weakness continues to exist. The auditor may audit the company's internal control over financial reporting in accordance with Auditing Standard No. 2 without ever performing an engagement in accordance with this standard.

Auditor's Objective in an Engagement To Report on Whether a Previously Reported Material Weakness Continues To Exist

5. The auditor's objective in an engagement to report on whether a previously reported material weakness continues to exist is to obtain reasonable assurance about whether the previously reported material weakness exists as of a date specified by management and to express an opinion thereon. The auditor's opinion relates to the existence of a specifically identified material weakness as of a specified date and does not relate to the effectiveness of the company's internal control over financial reporting overall.

6. To obtain reasonable assurance, the auditor should obtain and evaluate evidence about whether specified controls were designed and operated effectively as of the date specified by management and whether those controls satisfy the company's stated control objective.

Note: Obtaining and evaluating evidence about whether the specified controls are designed effectively without also obtaining evidence about whether those controls operated effectively would not result in the auditor obtaining reasonable assurance for the purpose of expressing an opinion on whether a material weakness continues to exist.

Conditions for Engagement Performance

7. The auditor may report on whether a previously reported material weakness continues to exist at a company only if all of the following conditions are met:

a. Management accepts responsibility for the effectiveness of internal control over financial reporting;

b. Management evaluates the effectiveness of the specific control(s) that it believes addresses the material weakness using the same control criteria that management used for its most recent annual assessment of internal control over financial reporting and management's stated control objective(s);

c. Management asserts that the specific control(s) identified is effective in achieving the stated control objective;

d. Management supports its assertion with sufficient evidence, including documentation; and

e. Management presents a written report that will accompany the auditor's report that contains all the elements described in paragraph 48 of this standard.

8. If all the conditions in paragraph 7 of this standard are not met, the auditor is not permitted to complete the engagement to report on whether a previously reported material weakness continues to exist.

Framework and Definitions for Evaluation

9. The terms *internal control over financial reporting, control deficiency, significant deficiency, and material weakness* have the same meanings as the definitions of those terms in paragraphs 7 through 10, respectively, of Auditing Standard No. 2.

10. Paragraph 13 of Auditing Standard No. 2 states that management is required to base its annual assessment of the effectiveness of the company's internal control over financial reporting on a suitable, recognized control framework (also known as *control criteria*) and describes the characteristics that make a framework suitable for this purpose. For purposes of an engagement to report on whether a previously reported material weakness continues to exist, both management and the auditor must use both (1) the same control criteria used for the company's most recent annual assessment of internal control over financial reporting, and (2) the company's stated control objective(s) to evaluate whether a material weakness continues to exist.

Note: The performance and reporting requirements in Auditing Standard No. 2 and in this standard are based on the Committee of Sponsoring Organizations (''COSO'') of the Treadway Commission's publication, *Internal Control—Integrated Framework.* Known as the COSO report, it provides a suitable and available framework for purposes of management's annual assessment of internal control over financial reporting. (More information about the COSO framework is included in paragraphs 14 and 15 of Auditing Standard No. 2, the COSO report, and AU sec. 319, *Consideration of Internal Control in a Financial Statement Audit.*)

11. A *control objective* provides a specific target against which to evaluate the effectiveness of controls. A control objective for internal control over financial reporting generally relates to a relevant financial statement assertion and states a criterion for evaluating whether the company's control procedures in a specific area provide reasonable assurance that a misstatement to or omission in that relevant assertion is prevented or detected by controls on a timely basis.[1]

12. Management establishes control objectives that are tailored to the individual company. The process of tailoring control objectives to the individual company allows the control criteria used for management's annual assessment to be applied to the facts and circumstances in a reasonable and appropriate manner. Although control objectives are used most frequently to evaluate the effectiveness of control activities, the other components of internal control over financial reporting (*i.e.*, control environment, risk assessment, information and communication, and monitoring) also can be expressed in terms of control objectives.

13. In an audit of internal control over financial reporting, the auditor is required to identify the company's control objectives in each area and to identify the controls that satisfy each control objective to evaluate whether the company's internal control over financial reporting is designed effectively.[2]

14. Table 1 includes examples of control objectives and their related assertions:

TABLE 1.—EXAMPLES OF CONTROL OBJECTIVES AND RELATED ASSERTIONS

Control objectives	Assertions
Recorded sales of product X initiated on the company's Web site are real.	Existence or occurrence.
Product X warranty losses that are probable and can be reasonably estimated are recorded as of the company's quarterly financial statement period-ends.	Completeness.
Interest rate swaps are recorded at fair value.	Valuation or allocation.
The company has legal title to recorded product X inventory in the company's Dallas, TX warehouse.	Rights and obligations.
Pending litigation that is reasonably possible to result in a material loss is disclosed in the quarterly and annual financial statements.	Presentation and disclosure.

15. If a material weakness has previously been reported, a necessary control objective (or objectives) has not been achieved.

16. A *stated control objective* in the context of an engagement to report on whether a material weakness continues to exist is the specific control objective identified by management that, if achieved, would result in the material weakness no longer existing.

17. Because the stated control objective, for purposes of this engagement, provides management and the auditor with a specific target against which to evaluate whether the material weakness continues to exist, management and the auditor must be satisfied that, if the stated control objective were achieved, the material weakness would no longer exist.

Note: When a material weakness has a pervasive effect on the company's internal control over financial reporting, identifying the related control objectives that are not being achieved may be difficult because of the large number of control objectives affected. A material weakness related to an ineffective control environment would be an example of this circumstance. If management and the auditor have difficulty identifying *all* of the stated control objectives affected by a material weakness, the material weakness probably is not suitable for this engagement and should be addressed, instead, through the auditor's annual audit of internal control over financial reporting conducted under Auditing Standard No. 2.

[1] *See* paragraphs 68 to 70 of Auditing Standard No. 2 for additional information on relevant assertions.

[2] *See* paragraph 88 of Auditing Standard No. 2.

Performing an Engagement to Report on Whether a Previously Reported Material Weakness Continues to Exist

18. In an engagement to report on whether a previously reported material weakness continues to exist, the auditor must obtain sufficient competent evidence about the design and operating effectiveness of specified controls that provide reasonable assurance that the company's stated control objective is achieved in the context of the control criteria (*e.g.*, COSO).

Note 1: An individual material weakness may be associated with a single stated control objective or with more than one stated control objective, depending on the nature of the material weakness and the manner in which the company tailors its stated control objectives to its business.

Note 2: Depending on the nature of the company's business, its organization, its internal control over financial reporting, and the specific material weakness that is the subject of this engagement, the auditor may determine that he or she is not able to obtain a sufficient basis for reporting on whether a previously reported material weakness continues to exist without performing a complete audit of internal control over financial reporting in accordance with Auditing Standard No. 2.

Applying the Standards of the PCAOB

19. The auditor must adhere to the standards of the PCAOB in performing an engagement to report on whether a previously reported material weakness continues to exist. Adherence to the standards involves:

a. Planning the engagement,

b. Obtaining an understanding of internal control over financial reporting,

c. Testing and evaluating whether a material weakness continues to exist, including using the work of others, and

d. Forming an opinion on whether a previously reported material weakness continues to exist.

20. Even though some requirements of this standard are set forth in a manner that suggests a sequential process, auditing whether a previously reported material weakness continues to exist involves a process of gathering, updating, and analyzing information. Accordingly, the auditor may perform some of the procedures and evaluations described in this section of the standard concurrently.

21. The engagement to report on whether a previously reported material weakness continues to exist must be performed by a person or persons having adequate technical training and proficiency as an auditor. In all matters related to the assignment, an independence in mental attitude must be maintained. Due professional care must be exercised in the performance of the engagement and the preparation of the report. Paragraphs 30 through 36 of Auditing Standard No. 2 describe the application of these standards in the context of an internal control-related service.

22. This standard establishes the fieldwork and reporting standards applicable to an engagement to report on whether a previously reported material weakness continues to exist.

23. The concept of materiality, as discussed in paragraphs 22 and 23 of Auditing Standard No. 2, underlies the application of the general and fieldwork standards in an engagement to report on whether a previously reported material weakness continues to exist. Therefore, the auditor uses materiality at the financial-statement level, rather than at the individual account-balance level, in evaluating whether a material weakness exists. The auditor should assess materiality as of the date that management asserts that the previously reported material weakness no longer exists.

Planning the Engagement

24. The auditor should properly plan the engagement to report on whether a previously reported material weakness continues to exist and should properly supervise any assistants. When planning the engagement, the auditor should evaluate how the matters described in paragraph 39 of Auditing Standard No. 2 will affect the auditor's procedures.

Obtaining an Understanding of Internal Control Over Financial Reporting

25. To perform this engagement, the auditor must have a sufficient knowledge of the company and its internal control over financial reporting. An auditor who has audited the company's internal control over financial reporting in accordance with Auditing Standard No. 2 as of the date of the company's most recent annual assessment of internal control over financial reporting would be expected to have obtained a sufficient knowledge of the company and its internal control over financial reporting to perform this engagement.

Note: The second sentence of the paragraph above contemplates that the auditor's previous engagement under Auditing Standard No. 2 resulted in rendering an opinion. If an auditor previously engaged to perform an audit of internal control over financial reporting in accordance with Auditing Standard No. 2 has not yet rendered an opinion on the effectiveness of the company's internal control over financial reporting as of the company's most recent year-end or more recently, then that auditor should follow the requirements for a successor auditor in paragraphs 26a–b and 27. Additionally, if an auditor has previously performed an audit of internal control over financial reporting at the company and is now a successor auditor (because another auditor has subsequently performed an audit of internal control over financial reporting at the company in intervening years), the auditor should follow the requirements in paragraphs 26 and 27 for a successor auditor.

26. When a successor auditor [3] performs an engagement to report on whether a previously reported material weakness continues to exist and he or she has not yet completed an audit of internal control over financial reporting at the company, he or she must perform procedures to obtain sufficient knowledge of the company's business and its internal control over financial reporting to achieve the objective of the engagement, as described in paragraph 5 of this standard. A successor auditor who has not yet completed an audit of internal control over financial reporting at the company must perform the following procedures as part of obtaining sufficient knowledge of the company's business and its internal control over financial reporting:

a. Comply with paragraphs 47 through 51 of Auditing Standard No. 2 regarding obtaining an understanding of internal control over financial reporting. The extent of understanding of internal control over financial reporting needed to satisfy these requirements in the context of an engagement to report on whether a previously reported material weakness continues to exist depends on the nature of the material weakness on which the auditor is reporting. The more pervasive the effects of the material weakness, the more extensive the understanding of internal control over financial reporting should be under these requirements. For example, if the material weakness affects company-level controls, a more extensive understanding of internal control over financial reporting will be necessary than if the effects of the material weakness are isolated at the transaction level.

b. Perform a walkthrough as described in paragraphs 79 through 82 of Auditing Standard No. 2 for all major classes of transactions that are directly affected by controls specifically identified by management as addressing the material weakness.

Note: Some controls have only an indirect effect on a major class of transactions, such as certain controls in the control

[3] The term *successor auditor* has the same meaning as the definition of that term in paragraph .02 of AU sec. 315, *Communications Between Predecessor and Successor Auditors.*

environment or risk assessment components of internal control over financial reporting. The auditor need not perform a walkthrough of major classes of transactions that are affected only indirectly by the controls specifically identified by management as addressing the material weakness.

c. In addition to the communication requirements described in AU sec. 315, *Communications Between Predecessor and Successor Auditors,* the successor auditor should make specific inquiries of the predecessor auditor. These inquiries should address the basis for the predecessor auditor's determination that a material weakness existed in the company's internal control over financial reporting and the predecessor auditor's awareness of any information bearing on the company's ability to successfully address that material weakness.

27. A successor auditor may determine that he or she needs to perform procedures in addition to those specified in paragraph 26 of this standard to obtain a sufficient knowledge of the company's business and its internal control over financial reporting. Depending on the nature of the company's business, its organization, its internal control over financial reporting, and the specific material weakness that is the subject of this engagement, a successor auditor may determine that he or she is not able to obtain a sufficient basis for reporting on whether a previously reported material weakness continues to exist without performing a complete audit of internal control over financial reporting in accordance with Auditing Standard No. 2.

Testing and Evaluating Whether a Material Weakness Continues to Exist

28. The auditor must obtain an understanding of and evaluate management's evidence supporting its assertion that the specified controls related to the material weakness are designed and operated effectively, that these controls achieve the company's stated control objective(s) consistent with the control criteria, and that the identified material weakness no longer exists. If the auditor determines that management has not supported its assertion with sufficient evidence, the auditor cannot complete the engagement to report on whether a previously reported material weakness continues to exist, because one of the conditions for engagement completion described in paragraph 7 of this standard would not be met.

Note: Paragraphs 40 through 46 of Auditing Standard No. 2 apply to the auditor's evaluation of management's annual assessment of internal control over financial reporting and management's related documentation. The auditor may apply the relevant concepts described in that section to the evaluation of management's evidence supporting management's assertion that a previously reported material weakness no longer exists.

29. As a part of evaluating management's evidence supporting its assertion, the auditor should determine whether management has selected an appropriate date for its assertion. In making this determination, the auditor should take into consideration the following:

a. Management's assertion that a previously reported material weakness no longer exists may be made as of any specified date that permits management to obtain sufficient evidence supporting its assertion.

Note: The auditor also should determine whether the specified date of management's assertion permits the auditor to obtain sufficient evidence supporting his or her opinion.

b. Depending on the nature of the material weakness, the stated control objective, and the specified controls, the specified date of management's assertion may need to be after the completion of one or more period-end financial reporting processes.

c. Controls that operate daily and on a continuous, or nearly continuous, basis generally permit the auditor to obtain sufficient evidence as to their operating effectiveness as of almost any date management might choose to specify in its report.

d. Controls that operate over the company's period-end financial reporting process typically can be tested only in connection with a period-end.

30. The auditor should obtain evidence about the effectiveness of all controls specifically identified in management's assertion. The nature, timing, and extent of the testing that enables the auditor to obtain sufficient evidence supporting his or her opinion on whether a previously reported material weakness continues to exist will depend on both the nature of the controls specifically identified by management as meeting the company's stated control objectives and the date of management's assertion.

31. All controls that are necessary to achieve the stated control objective(s) should, therefore, be specifically identified and evaluated. The specified controls will necessarily include controls that have been modified or newly implemented and also may include existing controls that previously were deemed effective during management's most recent annual assessment of internal control over financial reporting. As part of testing and evaluating the design effectiveness of the specified controls, the auditor should determine whether the specified controls would meet the stated control objective(s) if they operated as designed. In making this evaluation, the auditor should apply paragraphs 88 through 91 of Auditing Standard No. 2.

32. Consistent with the direction in paragraph 92 of Auditing Standard No. 2, the auditor should evaluate the operating effectiveness of a specified control by determining whether the specified control operated as designed and whether the person performing the control possesses the necessary authority and qualifications to perform the control effectively. In determining the nature, timing, and extent of tests of controls, the auditor should apply paragraphs 93 through 102 and 105 through 107 of Auditing Standard No. 2.

33. The auditor should apply paragraph 98 of Auditing Standard No. 2 regarding an adequate period of time to determine the operating effectiveness of a control in the context of an engagement to report on whether a previously reported material weakness continues to exist. Paragraph 98 of Auditing Standard No. 2 states (in part):

> The auditor must perform tests of controls over a period of time that is adequate to determine whether, as of the date specified in management's report, the controls necessary for achieving the objectives of the control criteria are operating effectively. The period of time over which the auditor performs tests of controls varies with the nature of the controls being tested and with the frequency with which specific controls operate and specific policies are applied.

For example, a transaction-based daily reconciliation generally would permit the auditor to obtain sufficient evidence as to its operating effectiveness in a shorter period of time than a pervasive, company-level control, such as any of those described in paragraphs 52 and 53 of Auditing Standard No. 2. Additionally, the auditor typically will be able to obtain sufficient evidence as to the operating effectiveness of controls over the company's period-end financial reporting process only by testing those controls in connection with a period-end.

34. The auditor should determine whether, based on the nature of the material weakness, performing substantive procedures to support recorded financial statement amounts or disclosures affected by the specifically identified controls is necessary to obtain sufficient evidence regarding the operating effectiveness of those controls. For example, a material weakness in the

company's controls over the calculation of its bad debt reserve ordinarily would require that the auditor also perform substantive procedures to obtain sufficient evidence supporting an opinion about whether the material weakness continues to exist as of a specified date. In this circumstance, in addition to testing the design and operating effectiveness of the controls specifically identified as achieving the company's stated control objective that its bad debt reserve is reasonably estimated and recorded, the auditor ordinarily would need to perform substantive procedures to determine that, as of that same specified date, the company's bad debt reserve was fairly stated in relation to the company's financial statements taken as a whole.

35. When the specified controls, stated control objectives, and material weakness affect multiple locations or business units of the company, the auditor may apply the relevant concepts in paragraphs B1 through B13 of Appendix B of Auditing Standard No. 2 to determine the locations or business units at which to perform procedures.

Using the Work of Others

36. The auditor should evaluate whether to use the work performed by others in an engagement to report on whether a previously reported material weakness continues to exist. To determine the extent to which the auditor may use the work of others to alter the nature, timing, or extent of the work the auditor otherwise would have performed, the auditor should apply paragraphs 109 through 115 and 117 through 125 of Auditing Standard No. 2.

37. The auditor's opinion relates to whether a material weakness no longer exists at the company because the stated control objective(s) is met. Therefore, if the auditor has been engaged to report on more than one material weakness or on more than one stated control objective, the auditor must evaluate whether he or she has obtained the principal evidence that the control objectives related to each of the material weaknesses identified in management's assertion are achieved. The auditor may, however, use the work of others to alter the nature, timing, or extent of the work he or she otherwise would have performed. For these purposes, the work of others includes relevant work performed by internal auditors, company personnel (in addition to internal auditors), and third parties working under the direction of management or the audit committee that provide information about the effectiveness of internal control over financial reporting.

38. Paragraph 122 of Auditing Standard No. 2 should be applied in the context of the engagement to report on whether a previously reported material weakness continues to exist. Paragraph 122 states, in part, ''As the significance of the factors listed in paragraph 112 increases, the ability of the auditor to use the work of others decreases at the same time that the necessary level of competence and objectivity of those who perform the work increases.'' There may, therefore, be some circumstances in which the scope of the audit procedures to be performed in this engagement will be so limited that using the work of others will not provide any tangible benefit to the company or its auditor. Additionally, the auditor should perform any walkthroughs himself or herself because of the degree of judgment required in performing this work.

Note: The requirement described in paragraph 26b of this standard for the auditor to perform a walkthrough applies only to an auditor who did not complete an audit of internal control over financial reporting as of the company's most recent annual assessment. An auditor who has rendered an opinion on the effectiveness of the company's internal control over financial reporting in accordance with Auditing Standard No. 2 as of the company's most recent annual assessment is not required to perform a walkthrough as part of this engagement.

39. The following example illustrates how to apply this section on using the work of others to this engagement.

In this example, the company's previously reported material weakness relates to the company's failure to perform bank reconciliations at its 50 subsidiaries. The specified controls identified by the company are the timely preparation of complete and accurate reconciliations between the company's recorded cash balances and the company's cash balances as reported by its financial institution.

Although certain controls over bank reconciliations are centralized, the performance of the bank reconciliations themselves is not centralized because they occur at each individual operating unit. Further, each operating unit has, on average, three separate cash accounts. The cash accounts affected are not material individually but are material in the aggregate. Most of the controls over the preparation of bank reconciliations involve a low degree of judgment in evaluating their operating effectiveness, can be subjected to objective testing, and have a low potential for management override.

If these conditions describe the specified controls over the preparation of bank reconciliations, the auditor could determine that, based on the nature of the controls as described above, he or she could use the work of others to a moderate extent, provided that the degree of competence and objectivity of the individuals performing the tests is high. The auditor might perform tests of controls that are centralized at the holding company level himself or herself; perform testing at a limited number of locations himself or herself; test the work of others performed at a limited number of other locations; review the results of the work of others at all other locations tested; and determine that, qualitatively and quantitatively, principal evidence had been obtained.

On the other hand, if the company's previously reported material weakness related to the company's failure to perform a reconciliation of its only cash account, few controls and few operations of those controls would underlie management's assertion that the material weakness no longer exists. In this circumstance, it is unlikely that the auditor would be able to use a significant amount of the work of others because of the limited scope of the total amount of work needed to test management's assertion and due to the requirement that the auditor obtain the principal evidence himself or herself.

Note: The examples provided in paragraph 126 of Auditing Standard No. 2 illustrate how to apply the requirements in Auditing Standard No. 2 regarding using the work of others in an audit of internal control over financial reporting. Because of the differences between the auditor obtaining the principal evidence supporting an opinion on the effectiveness of internal control over financial reporting overall and supporting an opinion on the much narrower subject of whether a specified material weakness in internal control over financial reporting continues to exist, the examples in Auditing Standard No. 2 may not illustrate the appropriate application of using the work of others in this narrower engagement. For instance, the examples in paragraph 126 of Auditing Standard No. 2 suggest that, for certain controls, the auditor could potentially use the work of others in its entirety. However, in most cases, the auditor could not solely use the work of others for a control specified in management's assertion regarding a material weakness no longer existing and, at the same time, obtain the principal evidence supporting his or her opinion. As another example, Auditing Standard No. 2 describes an example of appropriately alternating tests of controls. Alternating tests of controls is applicable only in the context of a recurring engagement, which is not the context for the auditor's reporting on whether a previously reported material weakness continues to exist.

Opinions, Based in Part, on the Work of Another Auditor

40. The auditor may apply the relevant concepts in AU sec. 543, *Part of Audit Performed by Other Independent Auditors,* in an engagement to report on whether a previously reported material weakness continues to exist, with the following exception. If the auditor decides to serve

as the principal auditor and to use the work and reports of another auditor as a basis, in part, for his or her opinion, the principal auditor must not divide responsibility for the engagement with the other auditor. Therefore, the principal auditor must not make reference to the other auditor in his or her report.

Forming an Opinion on Whether a Previously Reported Material Weakness Continues to Exist

41. When forming an opinion on whether a previously reported material weakness continues to exist, the auditor should evaluate all evidence obtained from all sources. This process should include an evaluation of the sufficiency of the evidence obtained by management and the results of the auditor's evaluation of the design and operating effectiveness of the specified controls.

42. Management may conclude that a previously reported material weakness no longer exists because it has been reduced to a significant deficiency. If management does not plan to correct the significant deficiency within a reasonable period of time, the auditor should evaluate whether the remaining significant deficiency could be indicative of a material weakness in internal control over financial reporting. Under paragraph 140 of Auditing Standard No. 2, a significant deficiency not corrected after some reasonable period of time is a strong indicator of a material weakness. Because the auditor is not required to provide an opinion under this voluntary engagement, the auditor could reasonably decline to provide an opinion under such circumstances.

43. The auditor may issue an opinion on whether a previously reported material weakness continues to exist only when there have been no restrictions on the scope of the auditor's work. Because of the scope of an engagement to report on whether a previously reported material weakness continues to exist, any limitations on the scope of the auditor's work require the auditor either to disclaim an opinion or to withdraw from the engagement. A qualified opinion is not permitted.

Note: As described in paragraph 51 of this standard, the auditor's opinion on whether a previously reported material weakness continues to exist may be expressed as ''the material weakness exists'' or ''the material weakness no longer exists.'' Therefore, the provisions of this standard do not distinguish between an unqualified opinion and an adverse opinion and, instead, refer simply to ''an opinion'' or ''the auditor's opinion.''

Requirement for Written Representations

44. In an engagement to report on whether a previously reported material weakness continues to exist, the auditor should obtain written representations from management:

a. Acknowledging management's responsibility for establishing and maintaining effective internal control over financial reporting;

b. Stating that management has evaluated the effectiveness of the specified controls using the specified control criteria and management's stated control objective(s);

c. Stating management's assertion that the specified controls are effective in achieving the stated control objective(s) as of a specified date;

d. Stating management's assertion that the identified material weakness no longer exists as of the same specified date;

e. Stating that management believes that its assertions are supported by sufficient evidence;

f. Describing any material fraud and any other fraud that, although not material, involves senior management or management or other employees who have a significant role in the company's internal control over financial reporting and that has occurred or come to management's attention since the date of management's most recent annual assessment of internal control over financial reporting; and

g. Stating whether there were, subsequent to the date being reported on, any changes in internal control over financial reporting or other factors that might significantly affect the stated control objective(s) or indicate that the identified controls were not operating effectively as of, or subsequent to, the date specified in management's assertion.

45. The written representations should be signed by those members of management with overall responsibility for the company's internal control over financial reporting whom the auditor believes are responsible for and knowledgeable about, directly or through others in the organization, the matters covered by the representations. Such members of management ordinarily include the chief executive officer and chief financial officer or others with equivalent positions in the company.

46. The failure to obtain written representations from management, including management's refusal to furnish them, constitutes a limitation on the scope of the engagement. As discussed further in paragraph 43 of this standard, if there is a limitation on the scope of an engagement to report on whether a previously reported material weakness continues to exist, the auditor must either disclaim an opinion or withdraw from the engagement. Further, the auditor should evaluate the effects of management's refusal on his or her ability to rely on other representations of management, including, if applicable, representations obtained in an audit of the company's financial statements.

Documentation Requirements

47. The documentation requirements in Auditing Standard No. 3, *Audit Documentation,* are modified in the following respect as they apply to this engagement. Paragraph 14 of Auditing Standard No. 3 defines the *report release date* as the date the auditor grants permission to use the auditor's report in connection with the issuance of the company's financial statements. As described in paragraph 29 of this standard, management's assertion that a material weakness no longer exists may be made as of a date other than a period-end financial reporting date. Therefore, the auditor's release of a report on whether a previously reported material weakness continues to exist may not necessarily be associated with the issuance of financial statements of the company. Accordingly, in an engagement to report on whether a previously reported material weakness continues to exist, the report release date for purposes of applying Auditing Standard No. 3 is the date the auditor grants permission to use the auditor's report on whether a previously reported material weakness continues to exist.

Reporting on Whether a Previously Reported Material Weakness Continues To Exist

Management's Report.

48. As a condition for the auditor's performance of this voluntary engagement, management is required to present a written report that will accompany the auditor's report, as described in paragraph 7e of this standard. To satisfy this condition for the auditor's performance of this engagement, management's report should include:

a. A statement of management's responsibility for establishing and maintaining effective internal control over financial reporting for the company;

b. A statement identifying the control criteria used by management to conduct the required annual assessment of the effectiveness of the company's internal control over financial reporting;

c. An identification of the material weakness that was identified as part of management's annual assessment;

Note: This report element should be modified in the case in which management's annual assessment did not identify the material weakness, but, rather, only the auditor's report on management's annual assessment identified the material weakness.

d. An identification of the control objective(s) addressed by the specified controls and a statement that the specified controls achieve the stated control objective(s) as of a specified date; and

e. A statement that the identified material weakness no longer exists as of the same specified date because the specified controls address the material weakness.

Auditor's Evaluation of Management's Report

49. With respect to management's report, the auditor should evaluate the following matters:

a. Whether management has properly stated its responsibility for establishing and maintaining effective internal control over financial reporting;

b. Whether the control criteria used by management to conduct the evaluation is suitable;

c. Whether the material weakness, stated control objectives, and specified controls have been properly described; and

d. Whether management's assertions, as of the date specified in management's report, are free of material misstatement.

50. If, based on the results of this evaluation, the auditor determines that management's report does not include the elements described in paragraph 48 of this standard, the conditions for engagement performance have not been met.

Auditor's Report

51. The auditor's report on whether a previously reported material weakness continues to exist must include the following elements:

a. A title that includes the word independent;

b. A statement that the auditor has previously audited and reported on management's annual assessment of internal control over financial reporting as of a specified date based on the control criteria, as well as a statement that the auditor's report identified a material weakness;

Note: This report element should be modified in cases in which a successor auditor's performance of this engagement is occurring before he or she has opined on the effectiveness of internal control over financial reporting overall in accordance with Auditing Standard No. 2. In this circumstance, the auditor's report should refer to the predecessor auditor's report on management's annual assessment and the predecessor auditor's identification of the material weakness.

c. A description of the material weakness;

d. An identification of management's assertion that the identified material weakness in internal control over financial reporting no longer exists;

e. An identification of the management report that includes management's assertion, such as identifying the title of the report (if the report is titled);

f. A statement that management is responsible for its assertion;

g. An identification of the specific controls that management asserts address the material weakness;

Note: As discussed further in paragraph 31, all controls that are necessary to achieve the stated control objective should be identified.

h. An identification of the company's stated control objective that is achieved by these controls;

i. A statement that the auditor's responsibility is to express an opinion on whether the material weakness continues to exist as of the date of management's assertion based on his or her auditing procedures;

j. A statement that the engagement was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States);

k. A statement that the standards of the Public Company Accounting Oversight Board require that the auditor plan and perform the engagement to obtain reasonable assurance about whether a previously reported material weakness continues to exist at the company;

l. A statement that the engagement includes examining evidence supporting management's assertion and performing such other procedures the auditor considered necessary in the circumstances and that the auditor obtained an understanding of internal control over financial reporting as part of his or her previous audit of management's annual assessment of internal control over financial reporting and updated that understanding as it specifically relates to changes in internal control over financial reporting associated with the material weakness;

Note: This report element should be modified in cases in which a successor auditor's performance of this engagement is occurring before he or she has opined on the effectiveness of internal control over financial reporting overall in accordance with Auditing Standard No. 2. In this circumstance, the auditor's report should include a statement that the engagement includes obtaining an understanding of internal control over financial reporting, examining evidence supporting management's assertion, and performing such other procedures as the auditor considered necessary in the circumstances.

m. A statement that the auditor believes the auditing procedures provide a reasonable basis for his or her opinion;

n. The auditor's opinion on whether the identified material weakness exists (or no longer exists) as of the date of management's assertion;

o. A paragraph that includes the following statements:

- That the auditor was not engaged to and did not conduct an audit of internal control over financial reporting as of the date of management's assertion, the objective of which would be the expression of an opinion on the effectiveness of internal control over financial reporting, and that the auditor does not express such an opinion, and
- That the auditor has not applied auditing procedures sufficient to reach conclusions about the effectiveness of any controls of the company as of any date after the date of management's annual assessment of the company's internal control over financial reporting, other than the controls specifically identified in the auditor's report, and that the auditor does not express an opinion that any other controls operated effectively after the date of management's annual assessment of the company's internal control over financial reporting.

Note: This report element statement should be modified in the case in which a successor auditor's performance of this engagement is occurring before he or she has opined on the effectiveness of internal control over financial reporting overall in accordance with Auditing Standard No. 2 to read as follows: That the auditor has not applied auditing procedures sufficient to reach conclusions about the effectiveness of any controls of the company other than the controls specifically identified in the auditor's report and that the auditor does not express an opinion that any other controls operated effectively.

p. A paragraph stating that, because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and that projections of any evaluation of the effectiveness of specific controls or internal control over financial reporting overall to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate;

q. The manual or printed signature of the auditor's firm;

r. The city and state (or city and country, in the case of non-U.S. auditors) from which the auditor's report has been issued; and

s. The date of the auditor's report.

52. Example A–1 in Appendix A is an illustrative auditor's report for an opinion that a material weakness no longer exists, expressed by an auditor who has previously reported on the company's internal control over financial reporting in accordance with Auditing Standard No. 2 as of the company's most recent year-end (herein after referred to as a continuing auditor). Example A–2 in Appendix A is an illustrative auditor's report for an opinion that a material weakness no longer exists expressed by a successor auditor.

53. As stated in paragraph 3 of this standard, the auditor may report on more than one previously reported material weakness as part of the same engagement. In this circumstance, the auditor should modify the report elements described in paragraph 51 of this standard accordingly.

54. *Report modifications.* The auditor should modify the standard report if any of the following conditions exist.

a. Other material weaknesses that were reported previously by the company as part of the company's annual assessment of internal control are not addressed by the auditor's opinion. (*See* paragraph 56 of this standard.)

b. A significant subsequent event has occurred since the date being reported on. (*See* paragraphs 57 and 58 of this standard.)

c. Management's report on whether a material weakness continues to exist includes additional information. (*See* paragraphs 59 through 60 of this standard.)

55. As described further in paragraph 43 of this standard, the form of the auditor's report resulting from an engagement to report on whether a previously reported material weakness continues to exist may be an opinion on whether a material weakness continues to exist, or it may be in the form of a disclaimer of opinion. A qualified opinion is not permitted. Any limitations on the scope of the auditor's work preclude the expression of an opinion. In addition to these reporting alternatives, an auditor may elect not to report on whether a material weakness continues to exist and, instead, withdraw from the engagement.

56. *Other material weaknesses reported previously by the company as part of the company's annual assessment of internal control are not addressed by the auditor's opinion.* In the circumstance in which the company previously has reported more than one material weakness, the auditor may be engaged to report on whether any or all of the material weaknesses continue to exist. If the auditor reports on fewer than all of the previously reported material weaknesses, the auditor should include the following or similar language in the paragraph that states that the auditor was not engaged to perform an audit of internal control over financial reporting. When referring to his or her previously issued report on management's annual assessment, the auditor should either attach that report or include information about where it can be publicly obtained.

> Our report on management's annual assessment of XYZ Company's internal control over financial reporting, dated [*date of report*], [attached or *identify location of where the report is publicly available*] identified additional material weaknesses other than the one identified in this report. We are not reporting on those other material weaknesses and, accordingly, express no opinion regarding whether those material weaknesses continue to exist after [*date of management's annual assessment, e.g., December 31, 200X*]. [*Revise this wording and references or attachments appropriately for use in a successor auditor's report.*]

Example A–3 in Appendix A is an illustrative report issued by a continuing auditor reporting on only one material weakness when additional material weaknesses previously were reported.

57. *Subsequent events.* A change in internal control over financial reporting or other factors that might significantly affect the effectiveness of the identified controls or the achievement of the company's stated control objective might occur subsequent to the date of management's assertion but before the date of the auditor's report. Therefore, the auditor should inquire of management whether there was any such change or factors. As described in paragraph 44 of this standard, the auditor should obtain written representations from management regarding such matters. Additionally, to obtain information about whether such a change has occurred that might affect the effectiveness of the identified controls or the achievement of the company's stated control objective and, therefore, the auditor's report, the auditor should inquire about and examine, for this subsequent period, the following:

- Internal audit reports (or similar functions, such as loan review in a financial institution) relevant to the stated control objective or identified controls issued during the subsequent period;
- Independent auditor reports (if other than the auditor's) of significant deficiencies or material weaknesses relevant to the stated control objective or identified controls;
- Regulatory agency reports on the company's internal control over financial reporting relevant to the stated control objective or identified controls; and
- Information about the effectiveness of the company's internal control over financial reporting relevant to the stated control objective or identified controls obtained as a result of other engagements.

58. If the auditor obtains knowledge about subsequent events that he or she believes adversely affect the effectiveness of the identified controls or the achievement of the stated control objective as of the date specified in management's assertion, the auditor should follow the requirements in paragraph 61 regarding special considerations when a material weakness continues to exist. If the auditor is unable to determine the effect of the subsequent event on the effectiveness of the identified controls or the achievement of the stated control objective, the auditor should disclaim an opinion.

59. *Management's report includes additional information.* If management's report includes information in addition to the matters described in paragraph 48 of this standard, the auditor should disclaim an opinion on the additional information. For example, the auditor should use the following or similar language as the last paragraph of the report to disclaim an opinion on management's plans to implement new controls:

> We do not express an opinion or any other form of assurance on management's statement referring to its plans to implement new controls by the end of the year.

60. If the auditor believes that management's additional information contains a material misstatement of fact, he or she should discuss the matter with management. If, after discussing the matter with management, the auditor concludes that a material misstatement of fact remains, the auditor should notify management and the audit committee, in writing, of the auditor's views concerning the information.

Note: If management makes the types of disclosures described in paragraph 59

outside its report on whether a previously reported material weakness continues to exist and includes them elsewhere within a document that contains management's and the auditor's reports on whether a previously reported material weakness continues to exist, the auditor would not need to disclaim an opinion, as described in paragraph 59. However, in that situation, the auditor's responsibilities are the same as those described in this paragraph if the auditor believes that the additional information contains a material misstatement of fact.

Special Considerations When a Previously Reported Material Weakness Continues to Exist

61. If the auditor determines that the previously reported material weakness continues to exist and the auditor reports on the results of the engagement, he or she must express an opinion that the material weakness exists as of the date specified by management.

62. As described in paragraph 55, the auditor is not required to issue a report as a result of this engagement. If the auditor does not issue a report in this circumstance, he or she must communicate, in writing, his or her conclusion that the material weakness continues to exist to the audit committee. Similarly, if the auditor identifies a material weakness during this engagement that has not been previously communicated to the audit committee in writing, the auditor must communicate that material weakness, in writing, to the audit committee.

63. Additionally, whenever the auditor concludes that a previously reported material weakness continues to exist, the auditor must consider that conclusion as part of his or her evaluation of management's quarterly disclosures about internal control over financial reporting, as required by paragraphs 202 through 206 of Auditing Standard No. 2.

64. For example, if the auditor were engaged to report on whether two separate material weaknesses continue to exist and concluded that one no longer exists and one continues to exist, the auditor's report could comprise either of the following: (1) A report that contained two opinions, one on the material weakness that the auditor concluded no longer exists and one opinion on the material weakness that the auditor concluded continues to exist, or (2) a report that contained only a single opinion on the material weakness that the auditor concluded no longer exists if the company modifies its assertion to address only the material weakness that the auditor concluded no longer exists. In the second circumstance, the auditor must communicate, in writing, his or her conclusion that a material weakness continues to exist to the audit committee and also should apply paragraph 56 of this standard regarding other material weaknesses reported previously that are not addressed by the auditor's opinion. Additionally, the auditor must consider that conclusion as part of his or her evaluation of management's quarterly disclosures about internal control over financial reporting, as required by paragraphs 202 through 206 of Auditing Standard No. 2.

Effective Date

65. This standard is effective [insert date of SEC approval].

Appendix A—Illustrative Reports on Whether a Previously Reported Material Weakness Continues to Exist

Paragraphs 51 through 60 of this standard provide direction on the auditor's report on whether a previously reported material weakness continues to exist. The following examples illustrate the application of those paragraphs.

Example A–1—*Illustrative Auditor's Report for a Continuing Auditor Expressing an Opinion that a Previously Reported Material Weakness No Longer Exists*

Example A–2—*Illustrative Auditor's Report for a Successor Auditor Expressing an Opinion that a Previously Reported Material Weakness No Longer Exists*

Example A–3—*Illustrative Auditor's Report for a Continuing Auditor Expressing an Opinion on Only One Previously Reported Material Weakness When Additional Material Weaknesses Previously Were Reported*

Example A–1—Illustrative Auditor's Report for a Continuing Auditor Expressing an Opinion That a Previously Reported Material Weakness No Longer Exists

Report of Independent Registered Public Accounting Firm

We have previously audited and reported on management's annual assessment of XYZ Company's internal control over financial reporting as of December 31, 200X based on *[Identify control criteria, for example, ''criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).'']*. Our report, dated [*date of report*], identified the following material weakness in the Company's internal control over financial reporting:

[Describe material weakness]

We have audited management's assertion, included in the accompanying [title of management's report], that the material weakness in internal control over financial reporting identified above no longer exists as of *[date of management's assertion]* because the following control(s) addresses the material weakness:

[Describe control(s)]

Management has asserted that the control(s) identified above achieves the following stated control objective, which is consistent with the criteria established in *[identify control criteria used for management's annual assessment of internal control over financial reporting]: [state control objective addressed]*. Management also has asserted that it has tested the control(s) identified above and concluded that the control(s) was designed and operated effectively as of *[date of management's assertion]*. XYZ Company's management is responsible for its assertion. Our responsibility is to express an opinion on whether the identified material weakness continues to exist as of *[date of management's assertion]* based on our auditing procedures.

Our engagement was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the engagement to obtain reasonable assurance about whether a previously reported material weakness continues to exist at the company. Our engagement included examining evidence supporting management's assertion and performing such other procedures as we considered necessary in the circumstances. We obtained an understanding of the company's internal control over financial reporting as part of our previous audit of management's annual assessment of XYZ Company's internal control over financial reporting as of December 31, 200X and updated that understanding as it specifically relates to changes in internal control over financial reporting associated with the material weakness described above. We believe that our auditing procedures provide a reasonable basis for our opinion. In our opinion, the material weakness described above no longer exists as of *[date of management's assertion]*.

We were not engaged to and did not conduct an audit of internal control over financial reporting as of *[date of management's assertion]*, the objective of which would be the expression of an opinion on the effectiveness of internal control over financial reporting. Accordingly, we do not express such an opinion. This means that we have not

applied auditing procedures sufficient to reach conclusions about the effectiveness of any controls of the company as of any date after December 31, 200X, other than the control(s) specifically identified in this report. Accordingly, we do not express an opinion that any other controls operated effectively after December 31, 200X.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of the effectiveness of specific controls or internal control over financial reporting overall to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

[Signature]

[City and State or Country]

[Date]

Example A–2—Illustrative Auditor's Report for a Successor Auditor Expressing an Opinion That a Previously Reported Material Weakness No Longer Exists

Report of Independent Registered Public Accounting Firm

We were engaged to report on whether a previously reported material weakness continues to exist at XYZ Company as of *[date of management's assertion]* and to audit management's next annual assessment of XYZ Company's internal control over financial reporting. Another auditor previously audited and reported on management's annual assessment of XYZ Company's internal control over financial reporting as of December 31, 200X based on *[Identify control criteria, for example, ''criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).'']*. The other auditor's report, dated [date of report], identified the following material weakness in the Company's internal control over financial reporting:

[Describe material weakness]

We have audited management's assertion, included in the accompanying [title of management's report], that the material weakness in internal control over financial reporting identified above no longer exists as of *[date of management's assertion] because the following control(s) addresses the material weakness:*

[Describe control(s)]

Management has asserted that the control(s) identified above achieves the following stated control objective, which is consistent with the criteria established in *[identify control criteria used for management's annual assessment of internal control over financial reporting]: [state control objective addressed].* Management also has asserted that it has tested the control(s) identified above and concluded that the control(s) was designed and operated effectively as of *[date of management's assertion].* XYZ Company's management is responsible for its assertion. Our responsibility is to express an opinion on whether the identified material weakness continues to exist as of *[date of management's assertion]* based on our auditing procedures.

Our engagement was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the engagement to obtain reasonable assurance about whether a previously reported material weakness continues to exist at the company. Our engagement included obtaining an understanding of internal control over financial reporting, examining evidence supporting management's assertion, and performing such other procedures as we considered necessary in the circumstances. We believe that our auditing procedures provide a reasonable basis for our opinion.

In our opinion, the material weakness described above no longer exists as of *[date of management's assertion]*.

We were not engaged to and did not conduct an audit of internal control over financial reporting as of *[date of management's assertion]*, the objective of which would be the expression of an opinion on the effectiveness of internal control over financial reporting. Accordingly, we do not express such an opinion. This means that we have not applied auditing procedures sufficient to reach conclusions about the effectiveness of any controls of the company other than the control(s) specifically identified in this report. Accordingly, we do not express an opinion that any other controls operated effectively.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of the effectiveness of specific controls or internal control over financial reporting overall to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

[*Signature*]
[*City and State or Country*]
[*Date*]

Example A–3—Illustrative Auditor's Report for a Continuing Auditor Expressing an Opinion on Only One Previously Reported Material Weakness When Additional Material Weaknesses Previously Were Reported

Report of Independent Registered Public Accounting Firm

We have previously audited and reported on management's annual assessment of XYZ Company's internal control over financial reporting as of December 31, 200X based on *[Identify control criteria, for example, ''criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).'']*. Our report, dated *[date of report]*, identified the following material weakness in the Company's internal control over financial reporting:

[Describe Material Weakness]

We have audited management's assertion, included in the accompanying [title of management's report], that the material weakness in internal control over financial reporting identified above no longer exists as of *[date of management's assertion]* because the following control(s) addresses the material weakness:

[Describe Control(s)]

Management has asserted that the control(s) identified above achieves the following stated control objective, which is consistent with the criteria established in *[identify control criteria used for management's annual assessment of internal control over financial reporting]: [state control objective addressed].* Management also has asserted that it has tested the control(s) identified above and concluded that the control(s) was designed and operated effectively as of *[date of management's assertion].* XYZ Company's management is responsible for its assertion. Our responsibility is to express an opinion on whether the identified material weakness continues to exist as of *[date of management's assertion]* based on our auditing procedures.

Our engagement was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards

require that we plan and perform the engagement to obtain reasonable assurance about whether a previously reported material weakness continues to exist at the company. Our engagement included examining evidence supporting management's assertion and performing such other procedures as we considered necessary in the circumstances. We obtained an understanding of the company's internal control over financial reporting as part of our previous audit of management's annual assessment of XYZ Company's internal control over financial reporting as of December 31, 200X and updated that understanding as it specifically relates to changes in internal control over financial reporting associated with the material weakness described above. We believe that our auditing procedures provide a reasonable basis for our opinion.

In our opinion, the material weakness described above no longer exists as of *[date of management's assertion].*

We were not engaged to and did not conduct an audit of internal control over financial reporting as of *[date of management's assertion]*, the objective of which would be the expression of an opinion on the effectiveness of internal control over financial reporting. Accordingly, we do not express such an opinion. This means that we have not applied auditing procedures sufficient to reach conclusions about the effectiveness of any controls of the company as of any date after December 31, 200X, other than the control(s) specifically identified in this report. Accordingly, we do not express an opinion that any other controls operated effectively after December 31, 200X. Our report on management's annual assessment of XYZ Company's internal control over financial reporting, dated *[date of report]*, [attached or *identify location of where the report is publicly available]* identified additional material weaknesses other than the one identified in this report. We are not reporting on those other material weaknesses and, accordingly, express no opinion regarding whether those material weaknesses continue to exist after *[date of management's annual assessment, e.g., December 31, 200X].*

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of the effectiveness of specific controls or internal control over financial reporting overall to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

[Signature]

[City and State or Country]

[Date]

Appendix B: Background and Basis for Conclusions

Table of Contents (Paragraph)

Introduction, B1
Background, B2–B6
Voluntary Nature of Engagement, B7–B9
Form of the Auditor's Opinion, B10–B14
As-of Date of Report, B15–B20
Applicability of the Standard to Material Weaknesses Not Previously Reported, B21–B27
Focus on Control Objectives, B28–B42
Concept of Materiality, B43–B50
Performance of Substantive Procedures, B51–B54
Using the Work of Others, B55–B64
Dividing Responsibility, B65–B68
New Material Weaknesses Identified, B69–B75
Specific Identification of All Previously Reported Material Weaknesses, B76–B79
Other Reporting Matters, B80–B92
Conforming Amendments to AT sec. 101, B93–B95

Introduction

B1. This appendix summarizes factors that the Public Company Accounting Oversight Board (the ''Board'') deemed significant in reaching the conclusions in the standard. This appendix includes reasons for accepting certain views and not accepting others.

Background

B2. Section 404 of the Sarbanes-Oxley Act of 2002 (the ''Act'') requires the management of public companies each year to file an assessment of the effectiveness of their companies' internal control over financial reporting. The company's independent auditor must attest to, and report on, management's assessment. Under the Securities and Exchange Commission's (the ''SEC'' or ''Commission'') implementing rules, company management may not conclude that internal control over financial reporting is effective if one or more material weaknesses exists.

B3. When a company reports a material weakness, investors may be left uncertain about the reliability of the company's financial reporting. Both companies and report users have recognized the importance of a mechanism for alerting investors that a previously disclosed material weakness no longer exists.[4] The federal securities laws provide part of that mechanism. Those laws require the company to disclose to investors any changes in internal control over financial reporting that occurred during the company's most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting.[5] Therefore, investors will learn of material improvements, such as the remediation of a material weakness, on a timely basis through quarterly disclosures.[6]

B4. When a company determines that a material weakness has been remediated, it may determine that disclosure is sufficient. Some investors and companies, however, have called for the ability to bolster confidence in management's assertions about those internal control improvements with the added assurance of the company's independent auditor.[7]

B5. The Board reviewed its existing auditing and attestation standards to determine whether adequate standards governing such an engagement already existed. The Board's interim attestation standards provide requirements for general attest engagements; however, the Board determined that these standards lack sufficient specificity for this purpose.[8] The Board, therefore,

[4] The Board's Standing Advisory Group (''SAG'') discussed possible auditor involvement with the elimination of a material weakness at its November 18, 2004, public meeting. The webcast of the November 18, 2004 SAG discussion and the related briefing paper on this topic, ''Reporting on the Correction of a Material Weakness,'' are available on the Board's Web site at *http://www.pcaobus.org.*

[5] *See* Item 308(c) of Regulation S–K, 17 CFR 229.308(c).

[6] In addition, even if internal control over financial reporting is effective as of the end of a company's fiscal year, investors also could potentially learn if it deteriorates materially during the year through these quarterly disclosures.

[7] The Standing Advisory Group's November 18, 2004 discussion included this type of encouragement.

[8] *See* AT sec. 101, ''Attest Engagement'' of the Board's interim standards. Effective April 16, 2003, the PCAOB adopted, on an initial, transitional basis, five temporary interim standards rules (PCAOB Rules 3200T, 3300T, 3400T, 3500T, and 3600T) that refer to pre-existing professional standards of auditing, attestation, quality control, ethics, and independence (the ''interim standards''). These rules were approved by the SEC on April 25, 2003. *See* SEC Release No. 33–8222. On December 17, 2003, the Board approved technical amendments to the interim standards rules indicating that, ''when the Board adopts a new auditing and related professional practice standard that addresses a subject matter that also is addressed in the interim standards, the affected portion of the interim standards will be superseded or effectively amended. Accordingly, the Board approved adding the phrase 'to the extent not superseded or amended by the Board' to each of the interim standards rules.'' *Technical Amendments to Interim Standards Rules*, PCAOB Release No. 2003–26 (Dec. 17, 2003); Exchange Act Release No. 49624 (Apr. 28, 2004) (SEC Approval). The interim standards are available on the Board's Web site at *http://www.pcaobus.org.*

proposed an auditing standard that would be tailored narrowly to an engagement to report on whether a previously reported material weakness continues to exist.

B6. The Board received 30 comment letters on its proposal, primarily from auditor and investor groups as well as from two issuers. Those comments led to changes in the standard, intended to make the requirements of the standard clearer and more operational. This appendix summarizes significant views expressed in those comment letters and the Board's responses.

Voluntary Nature of Engagement

B7. The proposed standard explicitly stated that the engagement described by this standard is voluntary and that the standards of the PCAOB did not require an auditor to undertake this engagement when a material weakness was previously reported. In addition, the Board stressed the voluntary nature of this engagement at the public meeting proposing this standard.

B8. The value and importance of the Board's standards providing the option of this type of auditor reporting on a material weakness was confirmed unanimously in the comment letters from investors and investor-related parties. Auditors were also supportive of the standard overall and its voluntary nature. Both of the issuers who commented indicated that they would be concerned if issuers become compelled to obtain such opinions. One of these commenters stressed that the disclosure requirements of management, coupled with enhanced criminal penalties, should provide investors with information regarding the continued existence or correction of a material weakness.

B9. The Board continues to believe that providing for this type of auditor reporting in its standards will serve the public interest. At the same time, the Board reaffirms that reporting on whether a material weakness continues to exist is a voluntary engagement and is not required by the standards of the PCAOB.

Form of the Auditor's Opinion

B10. The proposed standard called for the auditor to express a single opinion directly on the subject matter (*i.e.*, the material weakness itself), rather than on management's assertion, as follows:

> In our opinion, XYZ Company has eliminated the material weakness described above as of [*date of management's assertion*] because the stated control objective is met as of [*date of management's assertion*.]

B11. Primarily auditors commented on the form of the opinion in the proposed standard and their comments reflected a wide spectrum of ideas. Some commenters expressed support for the auditor's report, including the form of the opinion as proposed. Other comments included a suggestion for two opinions, consistent with Auditing Standard No. 2—one on the subject matter (the elimination of the material weakness) and one on management's assertion. Other commenters suggested that just one opinion was sufficient, though these commenters were split regarding whether the one opinion should be on management's assertion or on the subject matter. Other commenters suggested that an opinion stating that the material weakness had been eliminated, without the phrase ''because the stated control objective is met'' would be a better alternative, while others asked the Board to consider an opinion stating that the identified controls were effective because the stated control objective was met, without stating that the material weakness had been eliminated.

B12. A number of commenters expressed concern with the phrasing ''the material weakness has been eliminated,'' including the use of that phrase in the auditor's opinion and in the title of the proposed standard. These commenters believed that terminology such as ''elimination'' or ''eliminated'' might be too definite a term that might mislead report users into believing that there were no remaining deficiencies in the internal control over financial reporting in the area related to the specified material weakness, even though control deficiencies of a lesser severity than a material weakness might persist.

B13. After considering these suggestions, the Board decided to retain a single opinion on the subject matter and to revise the opinion wording. The Board continues to believe that a single opinion expressed directly on the subject matter is the simplest and clearest form of communication related to this engagement. Further, the Board believes that an auditor's opinion directly on the subject matter (*i.e.*, the material weakness itself) will best achieve the overarching objective of this engagement—to clearly communicate as of an interim date auditor assurance about whether a previously reported material weakness continues to exist.

B14. The Board agreed with commenters that use of the term ''elimination'' might increase the risk that a report user would misunderstand the assurance provided by an auditor's opinion on a previously reported material weakness. As a result, the Board changed the form of the opinion to ''In our opinion, the material weakness described above no longer exists as of [date of management's assertion]'' and the title of the standard to ''Reporting on Whether a Previously Reported Material Weakness Continues to Exist.'' The text of the standard was modified throughout to delete references to ''eliminated'' or ''elimination'' and to reflect wording consistent with the revised opinion and title.

As-of Date of Report

B15. The proposed standard provided for significant flexibility by allowing the engagement to be undertaken at any time during the year, limited only by implications associated with the nature of the material weakness. In other words, the proposed standard did not require the engagement to be performed in conjunction with an audit or review of financial statements. Instead, the proposed standard required the auditor to determine whether management had selected an appropriate date for its assertion and specified several matters for the auditor to consider in making this determination.

B16. A number of auditors suggested that the engagement described by the proposed standard should be performed only as of quarterly financial reporting dates instead of as of any date during the year. These commenters believed that such a requirement would allow the auditor to integrate this work with the auditor's interim review procedures under AU sec. 722, *Interim Financial Information*, and provide a link between the auditor's report on the material weakness and management's quarterly disclosures of material changes in internal control. Commenters noted that many of the material weaknesses that have been disclosed to date are related to the period-end financial reporting process and that the auditor would therefore need to test controls in connection with a period-end to determine whether the material weakness continues to exist. Several commenters linked their suggestion that this engagement be performed only as of a quarterly financial reporting date to the view that the standard's direction on performing substantive procedures as part of this engagement should be bolstered (*see* separate discussion on performance of substantive procedures beginning at paragraph B51). One commenter pointed out, however, that if this engagement could be conducted only in connection with a quarterly financial reporting date, special guidance for applying the standard to foreign filers would be necessary because foreign filers are not required to

report quarterly in the same manner as domestic filers.

B17. The Board believes that the flexibility provided in the proposed standard regarding the timing of the engagement is an important and appropriate feature of the standard. Although the Board agrees with commenters' observations that many of the material weaknesses disclosed during the past year were related to the period-end financial reporting process, the Board determined that the existing provisions of the proposed standard address this circumstance. In determining whether management has selected an appropriate date for its assessment, the standard requires the auditor to consider that controls that operate over the company's period-end financial reporting process typically can be tested only in connection with a period-end.

B18. Moreover, some material weaknesses—such as those that involve transaction-based controls that operate daily—are well suited for a management assertion and an auditor opinion that the material weakness no longer exists as of almost any date. Restricting an auditor's reporting on whether a material weakness continues to exist to only quarterly financial reporting dates could impose unnecessary delay on a company seeking auditor assurance that this type of material weakness no longer exists. For example, assume that a calendar year-end company had previously disclosed a material weakness that was the type that would lend itself well to reporting that it no longer existed as of any date. Further, management could not yet assert that the material weakness no longer existed as of March 31, but believed that it could make the assertion as of a date in April. If the standard restricted auditor reporting to a quarterly financial reporting date, the auditor would have to wait until June 30 to be able to attest to whether the material weakness continued to exist (and, presumably, would not be able to issue his or her report until July, at the earliest). While management could, in this example, provide timely disclosure to investors that the material weakness no longer existed, the Board concluded that structuring the provisions of the standard to potentially result in this kind of delay in auditor assurance would not serve the public interest.

B19. In light of these considerations, the Board decided to retain the provisions of the proposed standard that would permit the auditor to report on whether a previously reported material weakness continues to exist as of any date.

B20. At least one auditor asked for clarification about whether a report issued pursuant to Auditing Standard No. 2 that identified a material weakness could be issued at the same time as a report pursuant to this standard indicating that the material weakness no longer exists as of a later date. The degree of flexibility regarding the timing of this engagement would permit the company (depending on the company's ability to assert that a material weakness no longer exists and the auditor's ability to timely audit that assertion) to simultaneously distribute its annual reports and the management assertion and auditor report described in this standard. Consistent with this flexible approach, nothing in this standard or Auditing Standard No. 2 would preclude the auditor from issuing a single, combined report on the results of an audit of internal control over financial reporting pursuant to Auditing Standard No. 2 and the results of an engagement performed pursuant to this standard.

Applicability of the Standard to Material Weaknesses Not Previously Reported

B21. The proposed standard was structured to allow an auditor to report only on a previously reported material weakness. The proposed standard defined a previously reported material weakness as a material weakness that was previously described by an auditor's report issued pursuant to Auditing Standard No. 2. A material weakness initially identified *after* the company's annual assessment date could not, therefore, be the subject of an auditor's report under the proposed standard.

B22. Virtually all of the investors who submitted comment letters suggested that the standard should allow for auditor reporting on material weaknesses identified subsequent to the company's most recent annual assessment of internal control over financial reporting. Although some of these commenters expressed concern about the level of work that might be required of the auditor to thoroughly understand a material weakness not previously reported upon by an auditor, they did not believe that the standard should prohibit such reporting. One commenter stated that if a successor auditor could gain an understanding of a company's internal control sufficient to report on a material weakness that was identified and reported on by a predecessor auditor, an auditor should be able to gain the understanding necessary to report on a material weakness identified by management as of an interim date.

B23. The majority of the auditors who commented indicated strong opposition to allowing auditors to report in this engagement on material weaknesses not previously reported. These commenters suggested that the initial identification of a material weakness requires a level of understanding of the company's controls and the specific facts and circumstances surrounding the material weakness that can result only from a complete evaluation of the effectiveness of internal control over financial reporting. Additionally, at least one commenter expressed concern that the identification of a material weakness subsequent to the annual assessment is a strong indicator of a material change within the company's internal control over financial reporting. This commenter believed that in such a circumstance the auditor would not have sufficient knowledge of the current state of internal control over financial reporting to be able to consider the interaction and potential implications of the change on other controls. This commenter also believed that this situation would prevent the auditor, in most cases, from being able to determine whether the newly identified material weakness no longer exists.

B24. The Board decided to retain the approach described by the proposed standard. The Board believes that the issue of a newly identified material weakness being an indicator of a material change within a company's internal control over financial reporting is a valid concern. Although the change in internal control over financial reporting giving rise to any new material weakness may be confined specifically to the area in which the material weakness originally was identified, the change also could be more far-reaching. In such circumstances, the auditor may not be able to determine the effect of the change without performing a full audit of internal control over financial reporting.

B25. The Board also notes that there is an important distinction between material weaknesses previously identified in an auditor's report issued pursuant to Auditing Standard No. 2 and other newly identified material weaknesses. The primary purpose of the narrow engagement described by this standard is to establish a timely and reasonable mechanism that a company can use to remove any perceived ''stain'' upon its financial reporting due to an outstanding adverse audit opinion on internal control over financial reporting that identified a material weakness. In the case of a new material weakness that

is identified and addressed by management as of an interim date, an adverse auditor opinion previously attesting to the material weakness would not exist and, therefore, the new material weakness would not be the subject of the same type of market focus.

B26. There is also a fundamental difference between the auditor reporting on a material weakness not previously reported and a successor auditor reporting on a material weakness that was reported in a predecessor auditor's opinion on internal control over financial reporting. The fundamental difference is the concept of material change described above. The successor auditor must obtain a sufficient understanding of the company's internal control over financial reporting to report on the existence of a material weakness that was previously reported. This successor auditor, however, has the benefit of knowing that the material weakness was identified in the context of an audit of the internal control over financial reporting as a whole and that the predecessor auditor should have adequately described the nature of the material weakness (particularly its pervasiveness and the extent of its effect on the company's financial reporting). In contrast, in situations in which a material change has taken place and a new material weakness has arisen after the previous annual assessment of internal control over financial reporting, neither the predecessor nor the successor auditor has obtained this level of understanding as it relates to the newly identified material weakness.

B27. These considerations, taken together, resulted in the Board's decision to retain the provisions of the proposed standard that limit this engagement only to material weaknesses that have been previously described in an auditor's report issued pursuant to Auditing Standard No. 2. The Board also made changes to the standard, as suggested by one commenter, to make these provisions clearer. These changes included changing the title of the standard to ''Reporting on Whether a Previously Reported Material Weakness Continues to Exist'' as well as conforming changes to the text of the standard to refer explicitly to a *previously reported* material weakness as the subject matter of this engagement.

Focus on Control Objectives

B28. The proposed standard focused on stated control objectives to determine whether a material weakness continues to exist and posited that if a material weakness has been disclosed previously, a necessary control objective at the company has not been achieved. Because the term ''stated control objective'' was not precisely defined elsewhere in the Board's auditing standards, the proposed standard provided a definition as well as examples of stated control objectives.

B29. A *stated control objective* in the context of this engagement is the specific control objective identified by management that, if achieved, would result in the material weakness no longer existing. The stated control objective would provide management and the auditor with a specific target against which to evaluate whether the material weakness continues to exist. For this reason, the proposed standard required that management and the auditor be satisfied that if the stated control objective were achieved the material weakness would no longer exist.

B30. Comments on the proposed standard's focus on control objectives came primarily from auditors. Many auditors, either explicitly or implicitly, supported the focus on control objectives. One auditor suggested that, given the importance of control objectives, the proposed standard should explicitly state that documentation of control objectives is required.

B31. Several auditors, however, expressed concerns about the proposed standard's focus on control objectives. A couple of these commenters suggested that the proposed standard's emphasis on control objectives might inappropriately establish a framework for evaluating the effectiveness of internal control over financial reporting that differs from, or otherwise adversely affects the proper application of, the Committee of Sponsoring Organizations of the Treadway Commission's publication *Internal Control—Integrated Framework (''COSO'').*

B32. Most concerned commenters expressed apprehension that report users might be misled by an auditor's opinion that a material weakness had been eliminated because the control objectives had been met. They believed that this type of opinion might lead report users to mistakenly believe that if the control objectives were met, there were no remaining deficiencies in the internal control over financial reporting in the area related to the material weakness—when, in fact, a significant deficiency or deficiency could continue to exist.

B33. Another commenter noted that the examples in the proposed standard illustrated only control objectives for the control activities component of internal control over financial reporting—not for the other components (control environment, risk assessment, monitoring, information and communication). This commenter suggested that examples of control objectives in the other components would be helpful. Another commenter suggested that, given the importance of the control objective concept, if the Board's standards were to specifically address the concept, such a definition and discussion should reside in Auditing Standard No. 2. One concerned auditor concluded that, given the importance of control objectives, more guidance was needed, including clarification that if more than one control is necessary to achieve a stated control objective, all such controls must be identified and tested as part of this engagement.

B34. In response to comments, the Board decided to retain the definition of, and focus on, control objectives and provide additional guidance. The Board views the auditor's use of the concept of control objectives as analogous to the use of the concept of relevant assertions. The concept of relevant assertions was already familiar to experienced auditors and was specifically defined for the first time in Auditing Standard No. 2 because of that standard's focus on testing controls over all relevant assertions related to all significant accounts. Similarly, the concept of control objectives is familiar to most experienced auditors and is already used to describe the auditor's responsibilities under Auditing Standard No. 2).[9] A definition of control objectives (and stated control objectives) is provided in this standard because of the standard's focus on control objectives as a specific measure for determining whether a material weakness continues to exist. This is consistent with the Board's objective for its standards to be clear as well as the

[9] For example, paragraph 12 of Auditing Standard No. 2 states, ''Therefore, effective internal control over financial reporting often includes a combination of preventive and detective controls to achieve a specific control objective.'' Paragraph 85 of Auditing Standard No. 2 elaborates on this idea, including the example that, when performing tests of preventive and detective controls, the auditor might conclude that a deficient preventive control could be compensated for by an effective detective control and, therefore, not result in a significant deficiency or material weakness. That paragraph concludes with the statement, ''When determining whether the detective control is effective, the auditor should evaluate whether the detective control is sufficient to achieve the control objective to which the [deficient] preventive control relates.'' Perhaps most notably, paragraph 88 of Auditing Standard No. 2 requires the auditor to identify the company's control objectives in each area and identify the controls that satisfy each control objective to evaluate whether the company's internal control over financial reporting is designed effectively.

focus on control objectives in the engagement described by this standard.

B35. The Board believes that the standard's focus on control objectives is sound and helpful and is an appropriate complement to the control criteria, such as COSO, for the purposes of this engagement. The process of tailoring control objectives to the individual company allows the control criteria (*i.e.*, the evaluation framework) used for management's annual assessment to be applied to the facts and circumstances in a reasonable and appropriate manner. Accordingly, the emphasis in this standard on control objectives is consistent with, and supports a correct application of, COSO.

B36. The focus on whether the stated control objectives have been met as the target for determining whether a material weakness continues to exist does accommodate the circumstance in which a deficiency or significant deficiency continues to exist in that area of the company's internal control over financial reporting. Although several commenters linked this result with the focus on control objectives, this potential result would exist in any case within the overall construct of this standard, completely apart from the focus on control objectives. The potential for less severe deficiencies to persist in an area in which a previously reported material weakness no longer exists parallels the reporting results of an engagement performed under Auditing Standard No. 2. According to that standard, only material weaknesses (not less severe weaknesses) are disclosed in an auditor's report and only the existence of a material weakness and not less severe weaknesses affects the auditor's opinion on the effectiveness of the company's internal control over financial reporting. As an illustration, assume that a company that had previously reported a material weakness in internal control over financial reporting elected to wait until the auditor's next annual report issued pursuant to Auditing Standard No. 2 to obtain auditor assurance related to the existence of the material weakness. If the control weakness that had previously risen to the level of material weakness were reduced to a significant deficiency or deficiency as of the company's next year-end, the auditor's next report issued under Auditing Standard No. 2 would present an unqualified opinion indicating that the company's internal control over financial reporting was effective. The Board concluded that the users of an auditor's report on whether a previously reported material weakness continues to exist need only receive auditor assurance that the material weakness no longer exists and not more detailed information about whether less severe control deficiencies continue to persist.

B37. The Board notes, however, that paragraph 140 of Auditing Standard No. 2 states (in part) that strong indicators of a material weakness include circumstances in which significant deficiencies that have been communicated to management and the audit committee remain uncorrected after some reasonable period of time. If management does not plan to correct the significant deficiency within a reasonable period of time, the auditor should evaluate whether the remaining significant deficiency could be indicative of a material weakness in internal control over financial reporting. An auditor is not required to provide an opinion under this voluntary engagement, and could reasonably decline to provide an opinion under such circumstances.

B38. In response to comments that report users will mistakenly believe that an auditor's report issued pursuant to the standard's provisions is communicating auditor assurance that no control deficiencies exist in the area related to the former material weakness, the Board decided that the change in the title of the standard and the form of the auditor's opinion (discussed further in paragraph B14), coupled with this discussion, would sufficiently mitigate any potential for report users to misunderstand the assurance being provided by an engagement conducted under this standard. Removing the concept of control objectives from the standard would not address the potential for misunderstanding because this potential exists independently of the focus on control objectives.

B39. With regard to the recommendation that the standard provide additional examples of stated control objectives, including stated control objectives related to components of internal control over financial reporting other than control activities, the Board determined that the provisions of the standard should remain largely at the conceptual level and state that the other components of internal control over financial reporting can be expressed in terms of control objectives. The Board also determined to emphasize, in the note to paragraph 17 of the standard, that when a material weakness has a pervasive effect on the company's internal control over financial reporting, it may be difficult to identify all of the relevant control objectives and the material weakness probably is not suitable for this type of narrow, interim reporting.

B40. For the purposes of this engagement, a stated control objective need not be more precise than to describe an objective that relates to whether there is a more than remote risk that the company's financial statements are materially misstated in a given area. For instance, paragraph 14 of the standard includes the example control objective, ''The company has legal title to recorded product X inventory in the company's Dallas, TX warehouse.'' This example assumes that the product X inventory account related to the company's Dallas, TX warehouse represents a more than remote risk of material misstatement to the company's financial statements taken as a whole and has been identified as a separate significant account. This example does not suggest that a company should establish separate control objectives for all of its various types of inventory, by inventory location, regardless of materiality.

B41. Although the Board believes that the proposed standard made clear that in performing this engagement, the auditor should identify and test all controls necessary to achieve the stated control objective, based on the importance of this concept and in response to commenters, the Board concluded that an explicit clarification should be added. Not only must newly implemented or modified controls be identified and tested in this engagement, but *all* controls necessary to achieve the stated control objective must be identified and tested. For example, in a circumstance in which four controls must operate effectively for a given control objective to be achieved, the failure of one of those controls could result in a material weakness. In the context of this engagement, all four controls necessary to achieve the stated control objective would need to be specifically identified and tested. This must be the case because of the inherent limitations in internal control over financial reporting. If three of the four controls were found to be effective as of year-end, they cannot be assumed to be effective as of a later date. To render an opinion as of a current date about whether the material weakness exists, the auditor must have current evidence about whether all controls (in this example, all four controls) necessary to achieve the control objective are designed and operating effectively.

B42. Regarding the suggestion to include a requirement that control objectives be documented, the Board notes that neither COSO nor Auditing Standard No. 2 currently contain such a requirement. As with many aspects of

assessing the effectiveness of internal control over financial reporting, the better the documentation, the easier and more efficient the evaluation, especially from the auditor's perspective. In the context of this engagement, by virtue of creating a stated control objective, the company and the auditor would document the stated control objective, even if that documentation appeared only in their respective reports. Therefore, documentation is effectively required for the stated control objectives encompassed by an engagement conducted under this standard. The Board does not believe, however, that establishing a broad requirement for documenting *all* control objectives related to a company's internal control over financial reporting is needed at this time or would be appropriately placed within this standard.

Concept of Materiality

B43. To provide direction on the concept of materiality, the proposed standard largely referred to Auditing Standard No. 2. The proposed standard stated that the concept of materiality, as discussed in paragraphs 22 and 23 of Auditing Standard No. 2, underlies the application of the general and fieldwork standards in an engagement to report on whether a previously reported material weakness continues to exist. Therefore, the auditor uses materiality at the financial-statement level, rather than at the individual account-balance level, in evaluating whether a material weakness exists.

B44. Several auditors commented that the proposed standard should provide additional direction on how the auditor considers materiality in performing this engagement. Commenters believed that clarification was necessary regarding the appropriate time context for management's and the auditor's materiality judgments. These commenters asked whether materiality should be assessed as of the date management asserts to be the date at which the material weakness no longer exists, or as of the end of the prior year when the material weakness was originally reported.

B45. Most commenters on this issue suggested that the date for assessing materiality should be the date management asserts to be the date at which the material weakness no longer exists. Commenters noted, however, that this position would allow a material weakness to no longer exist merely as a result of a business acquisition or disposition, for example, because either of those actions would change materiality as of that point in time (and, in the case of a disposition, send the material weakness along with the disposed business).

B46. Several auditors suggested that the auditor's opinion should explicitly recognize the concept of materiality. Commenters suggested the following as alternatives that would recognize materiality: ''Management's assertion that XYZ Company has eliminated the material weakness described above as of [*date of management's assertion*] is fairly stated, in all material respects* * *'' and ''XYZ Company has eliminated the material weakness with respect to the Company's internal control over financial reporting as described above as of [*date specified in management's assertion*], in all material respects.'' These commenters were concerned that the opinion described by the proposed standard misrepresented the precision of the auditor's assessment and neglected the notion of reasonable assurance.

B47. The Board decided that the provisions in the standard regarding materiality should be clarified to specify that materiality should be assessed as of the date management asserts that the material weakness no longer exists. The as-of date of management's assertion and the auditor's opinion is fundamental to the auditor's decisions about whether he or she has obtained sufficient evidence to support an opinion and to the auditor's evaluation of that evidence to form an opinion on whether the material weakness exists as of that point in time. The Board believes that the logical and internally consistent position regarding the time context for assessing materiality is to assess materiality as of the date that management asserts the material weakness no longer exists. The Board also believes that materiality can be assessed as of a date other than a financial reporting period-end. This is consistent with the Board's decision, discussed further beginning at paragraph B15, that the standard permit the auditor to report on whether a previously reported material weakness continues to exist as of any date.

B48. The Board also believes that auditors should exercise caution in circumstances in which the only aspect of a previously reported material weakness that has changed is materiality (in other words, the size of the financial statement accounts has changed due to an acquisition or other activity rather than any changes in the design or operation of controls). In many such cases, the company will have undergone significant changes, with an associated change in internal control over financial reporting overall. In this circumstance, the auditor would need to perform procedures beyond the scope of work ordinarily contemplated under this standard to have a sufficient basis for his or her new assessment of materiality and an adequate understanding of the company's internal control over financial reporting overall. The Board believes that, in many cases in which the company has undergone a change of this magnitude, the auditor would need to perform a full audit of internal control over financial reporting in accordance with Auditing Standard No. 2 to have a sufficient basis for assessing materiality, understanding the company's internal control over financial reporting overall, and rendering an opinion about whether a material weakness continues to exist. Also, as discussed in paragraph B37, a previously reported material weakness may no longer exist because it has been reduced to a significant deficiency. In this circumstance, if management does not plan to correct the significant deficiency within a reasonable period of time, the auditor should evaluate whether the remaining significant deficiency could be indicative of a material weakness.

B49. Regarding the form of the auditor's opinion and concerns that the opinion suggested by the proposed standard implied an inappropriate degree of precision and neglected the concept of reasonable assurance, the Board concluded that the provisions of the proposed standard were sufficiently clear that the auditor's objective in this engagement was to plan and perform the engagement to obtain reasonable assurance about whether a previously reported material weakness continues to exist as of the date specified by management. Furthermore, the auditor's report described by the proposed standard included disclosure of this objective. The Board does not, therefore, believe that report users would mistakenly believe that the auditor's opinion, as proposed, would convey absolute assurance.

B50. In addition, the Board believes that including another reference to materiality in the auditor's opinion would not add anything of substance to the auditor's conclusion and could instead impair its readability. The determination of whether a material weakness exists is inherently linked to materiality. Stating that the material weakness no longer exists in all material respects would be redundant—the equivalent of saying that the financial statements are not materially misstated in all material respects. Accordingly, the Board has not added another reference to materiality in the auditor's opinion.

Performance of Substantive Procedures

B51. The proposed standard, consistent with its reliance on the existing provisions of Auditing Standard No. 2, focused largely on the tests of controls that the auditor must perform to obtain reasonable assurance that a material weakness no longer exists. The proposed standard additionally recognized that, in some cases, the auditor also would need to perform substantive procedures on account balances to obtain sufficient evidence as to whether a material weakness no longer exists.

B52. Several auditors believed that the proposed standard was too mild in its wording that the auditor ''may determine'' that performing substantive procedures was necessary. Those commenters believed that, to be consistent with the integrated audit concept of Auditing Standard No. 2 and to reflect the fact that identification of many material weaknesses during the past year occurred during the performance of substantive audit procedures, such wording did not adequately convey the importance of performing substantive procedures in an engagement to report on whether a previously reported material weakness continues to exist. Some commenters recommended that the standard set forth a presumptively mandatory requirement for the auditor to perform substantive audit procedures in all cases, while others suggested that strengthening the language or providing additional guidance about when substantive procedures are necessary would be sufficient.

B53. The Board continues to believe that in some circumstances, substantive procedures will not be necessary for the auditor to obtain sufficient evidence about whether a material weakness continues to exist. Like many aspects of this standard, the auditor's judgment in this area will depend on the nature of the material weakness. An auditor can obtain sufficient evidence to support an opinion on whether some material weaknesses continue to exist without the need for substantive procedures. Other material weaknesses necessitate substantive procedures for the auditor to obtain sufficient evidence. Therefore, the Board determined that it would be inappropriate to establish a presumptively mandatory requirement that substantive procedures be performed in all cases.

B54. The Board agreed, however, that the proposed standard did not sufficiently stress the potential importance of performing substantive procedures, depending on the nature of the material weakness. Paragraph 34 of the standard has, therefore, been modified in a manner that the Board believes better articulates the potential need to perform substantive procedures. An example also has been added to this paragraph of the standard to illustrate a circumstance in which substantive procedures ordinarily would need to be performed.

Using the Work of Others

B55. Similar to PCAOB Auditing Standard No. 2, the proposed standard permitted the auditor to use the work of others to alter the nature, timing, and extent of the auditor's performance of this work. Specifically, the proposed standard applied the framework for using the work of others described in PCAOB Auditing Standard No. 2. That framework requires the auditor to obtain the principal evidence supporting his or her opinion and to evaluate the nature of the controls being tested, together with the competence and objectivity of the persons performing the work.

B56. Under both PCAOB Auditing Standard No. 2 and the proposed standard, the framework measures principal evidence in relation to the overall assurance provided by the auditor. In PCAOB Auditing Standard No. 2, the principal evidence supporting the auditor's opinion should be evaluated in relation to the auditor's opinion on internal control over financial reporting overall. In contrast, the evaluation of whether the auditor has obtained the principal evidence supporting his or her opinion as to whether a material weakness no longer exists would need to be applied at the control objective level.

B57. There were few comments on the provisions for using the work of others in this proposed standard. Most commenters who commented on these provisions expressed confusion about a passage in the example of proposed paragraph 36, which stated that ''the auditor *might* perform a walkthrough of the reconciliation process himself or herself [emphasis added].'' Commenters believed that walkthroughs were required in the proposed standard in all cases and that walkthroughs must be conducted by the auditor himself or herself.

B58. One auditor suggested clarifying within the proposed standard that the auditor will be able to use the work of others only in limited circumstances. This same commenter also believed that the bank reconciliation example presented in the proposed standard to illustrate how the auditor could use the work of others in this type of engagement was too simplistic and requested additional, more realistic examples.

B59. The Board continues to believe that the framework for using the work of others that was established in Auditing Standard No. 2 is appropriate for use in this context and, therefore, the provisions for using the work of others in the standard have been retained as proposed. At the same time, the Board determined that it would be helpful to clarify, through the following discussion, that the evaluation of whether the auditor has obtained the principal evidence supporting his or her opinion on whether a material weakness continues to exist would need to be applied at the control objective level. A complete understanding of this feature of the standard is important because this provision allows for additional flexibility in the auditor's work.

B60. The auditor's opinion in this engagement is expressed only on whether the material weakness continues to exist—not on whether the individually identified controls are effective. As a result, the evaluation as to whether the auditor has obtained the principal evidence supporting his or her opinion should be made at the control objective level—not at the lower level of the controls individually identified in management's assertion and the auditor's report.

B61. If, for example, management's and the auditor's reports identify three separate previously reported material weaknesses that no longer exist, the auditor would, in effect, be rendering three separate opinions. Those opinions would indicate that each of the three individual material weaknesses continues to exist or no longer exists as of the date of management's assertion. The standard, therefore, would require the auditor to obtain the principal evidence that the *control objectives* related to each of the three identified material weaknesses were now achieved. However, the standard would not require that the auditor obtain the principal evidence that each *control specifically identified* in management's assertion as achieving the control objectives is effective.

B62. Auditing Standard No. 4 follows the same framework for using the work of others as Auditing Standard No. 2. There may, however, be some circumstances in which the scope of the audit procedures to be performed in this engagement will be so limited that using the work of others will not provide any tangible benefit to the company or its auditor. The Board believes that no additional specific restriction on the use of the work of others is appropriate or necessary in the context of this

engagement. Such a restriction would diminish the flexibility that the framework otherwise provides and perhaps inhibit the auditor's exercise of the judgment necessary to implement the framework appropriately. Furthermore, the Board does not believe that auditors need such direction within the standard to make appropriate decisions about using the work of others in this context.

B63. Similarly, the Board determined that no further examples of using the work of others were needed. The Board believes that additional examples demonstrating the application of the provisions in the standard for using the work of others to reflect more realistic (*i.e.*, complex, fact-driven) situations is better handled outside of the standard itself and by auditors—in their audit methodology, training courses, and other venues.

B64. In response to confusion about the requirement for walkthroughs, the Board clarified the standard by adding a note to paragraph 38 and deleted the reference to a walkthrough from the example on using the work of others. Walkthroughs are required only of a successor auditor when the successor auditor performs this engagement before performing an audit of internal control over financial reporting in accordance with Auditing Standard No. 2. A continuing auditor that has opined already on the company's internal control over financial reporting in accordance with Auditing Standard No. 2 as of the company's most recent annual assessment and is engaged to conduct this narrow engagement is not required to perform any walkthroughs as part of this engagement.

Dividing Responsibility

B65. Due to the narrow scope of an engagement to report on whether a material weakness continues to exist, the provisions of the proposed standard allowed the principal auditor to use the work and reports of another auditor as a basis, in part, for his or her opinion. The proposed standard also prohibited the principal auditor from dividing responsibility for the engagement with another auditor.

B66. Very few comments were received on this provision of the proposed standard. One auditor suggested that, although dividing responsibility may not be appropriate in certain circumstances, the standard should not prohibit it. Another auditor expressed confusion about whether the principal auditor could refer to the report of the other auditor but not divide responsibility with the other auditor.

B67. The Board continues to believe that, based on the nature of the engagement described by the standard, the principal auditor should be prohibited from dividing responsibility for the engagement with another auditor. The Board's consideration of the nature of this engagement included recognition of the narrow scope of the work (*i.e.*, whether a previously reported material weakness continues to exist), that the engagement would be voluntary, and that the assignment would be non-recurring (unlike the recurring nature of the audit of the financial statements or the audit of internal control over financial reporting). The Board notes that three appropriate alternatives exist in the circumstance in which another auditor is involved and the company wants to obtain auditor assurance that a previously reported material weakness no longer exists:

- The principal auditor could report on whether a previously reported material weakness continues to exist according to this standard by performing all of the testing required for this engagement himself or herself.
- The principal auditor could report on whether a previously reported material weakness continues to exist according to this standard by using the work and reports of another auditor as a basis, in part, for his or her opinion, and by taking responsibility for the work performed by the other auditor. In this case, the auditor may not make reference to the other auditor in his or her report on whether a previously reported material weakness continues to exist.
- The company could wait until year-end when the principal auditor would report on the effectiveness of internal control over financial reporting overall under the provisions of Auditing Standard No. 2.

B68. The Board concluded that the standard was sufficiently clear that the principal auditor could not divide responsibility with another auditor and, therefore, that the auditor also could not refer to the other auditor in his or her report. Accordingly, no change has been made to the standard in this regard.

New Material Weaknesses Identified

B69. The proposed standard was silent regarding the auditor's responsibilities if, during the performance of this engagement, he or she became aware of a new material weakness not previously reported on by an auditor.

B70. Several commenters requested that the standard address the auditor's responsibilities for new material weaknesses identified during this engagement and suggested what these responsibilities should be. One investor suggested that the standard should require the auditor to include disclosure of any new material weaknesses of which the auditor was aware in his or her report. This commenter stated that, otherwise, the auditor's report would become a way of telling investors the good news while concealing the bad news. Another commenter suggested that management should be required to include the new material weakness in management's assertion that would accompany the auditor's report and the auditor should then disclaim an opinion on the new material weakness.

B71. Both the identification of material weaknesses and the remediation of such weaknesses will be captured by management's voluntary and required reporting under the SEC's rules. Accordingly, the provisions of this standard do not facilitate management's ability to conceal from investors the emergence of a new material weakness at the company. Nevertheless, the Board agreed that when an auditor identifies a new material weakness during the performance of this engagement, the auditor should not simply remain silent. Accordingly, the Board modified the standard to require the auditor to communicate, in writing, to the audit committee any material weaknesses identified during this engagement that the auditor had not previously communicated, in writing, to the audit committee.

B72. The existing provisions of Auditing Standard No. 2 contain responsibilities for the auditor if (1) information comes to the auditor's attention during this engagement that leads him or her to believe, while performing quarterly procedures required by Auditing Standard No. 2, that management's quarterly disclosures are materially misleading, or (2) the auditor becomes aware of conditions that existed at the date of his or her last report issued under Auditing Standard No. 2.

B73. Paragraphs 202–206 of Auditing Standard No. 2 establish certain requirements for the auditor related to management's quarterly and annual certifications with respect to the company's internal control over financial reporting. If matters come to the auditor's attention during this engagement that lead him or her to believe, while fulfilling these quarterly requirements, that modification to the disclosures about changes in internal control over financial reporting is necessary for the certifications to be

accurate and to comply with the requirements of Section 302 of the Act and the SEC's rules, these provisions of Auditing Standard No. 2 require the auditor to take action. Such actions escalate from auditor communications with management and then to the audit committee, culminating in the auditor considering his or her additional responsibilities under AU sec. 317, *Illegal Acts by Clients,* and Section 10A of the Securities Exchange Act of 1934.

B74. In addition, a continuing or predecessor auditor would have responsibilities under paragraph 197 of Auditing Standard No. 2 if the existence of a new material weakness came to the auditor's attention. This paragraph effectively extends the responsibilities in AU sec. 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report,* to reports on the effectiveness of internal control over financial reporting issued pursuant to Auditing Standard No. 2. The identification of a new material weakness in the current year would cause the auditor, in fulfilling these responsibilities, to determine whether the facts relating to the material weakness existed at the date of the auditor's report pursuant to Auditing Standard No. 2 and, if so, (1) whether those facts would have changed the auditor's report issued under Auditing Standard No. 2 if he or she had been aware of them and (2) whether there are persons currently relying on or likely to rely on the auditor's report. If the auditor determined that the new material weakness identified in the current year actually existed as of the date of his or her previous report under Auditing Standard No. 2 and that it was not adequately identified and disclosed in that report, the auditor would need to take steps such as recalling and reissuing the previous report to ensure that investors did not continue to rely on the previously issued (erroneous) report.

B75. Including newly identified material weaknesses in the auditor's report could potentially mislead investors into believing that the assurance provided by this type of engagement is broader than it actually is. If report users were provided with disclosure (covered by the auditor's opinion) of new material weaknesses of which the auditor was aware, report users might incorrectly believe that the auditor's report captured *all* new material weaknesses that had arisen at the company. Similarly, a requirement for the auditor to disclose any new material weaknesses could lead report users to conclude, incorrectly, that no such disclosure means that there is current auditor assurance over the whole of internal control over financial reporting at the company. The objective of this engagement is to provide auditor assurance about whether a previously reported material weakness continues to exist—nothing broader. The only way for investors to obtain a more complete report from the auditor would be for the auditor to audit internal control over financial reporting in accordance with Auditing Standard No. 2.

Specific Identification of All Previously Reported Material Weaknesses

B76. The proposed standard required the auditor to modify his or her report if the auditor provides assurance on less than all of the material weaknesses previously reported. The proposed standard did not, however, require the auditor to specifically identify all of the previously reported material weaknesses not covered.

B77. All investors who commented on this issue suggested that all material weaknesses previously reported either should be referred to or specifically included in the auditor's report. They indicated that failure to identify the additional material weaknesses might lead some users to erroneously conclude that they no longer exist. Auditors, on the other hand, agreed that complete specific identification of the previously reported material weaknesses not covered by the auditor's opinion should not be included, primarily because they believe that it may increase the risk of confusion about the scope of the engagement and what is being covered in the auditor's opinion. Several commenters who agreed that specific identification was not necessary suggested that in addition to the report modification included in the proposed standard, the auditor's report on this engagement should specifically direct the reader to the previous auditor's report (issued under Auditing Standard No. 2), by either attaching a copy of the audit report or by providing direction as to where the report could be obtained.

B78. The Board believes that including a complete specific identification of the previously reported material weaknesses not covered by this engagement would prove problematic. As noted by many commenters, it is possible that including this detail would confuse report readers regarding the scope of this narrow engagement and could imply that, unless told otherwise, a report user should assume that those other material weaknesses do continue to exist. In some of the material weakness descriptions included in management's and the auditor's reports on the effectiveness of the company's internal control over financial reporting as of year-end, the description of multiple material weaknesses covered several pages. That level of detail in an auditor's report specifically targeted at whether just one material weakness continues to exist could easily overwhelm the rest of the audit report, making the report prone to various kinds of misinterpretations.

B79. The Board concluded that report readers would be better served by requiring the auditor to provide information regarding where to obtain the previously issued audit report—either by attaching it or referring to where it could be publicly obtained.

Other Reporting Matters

B80. *No Requirement to Issue a Report.* The proposed standard required that the auditor, if he or she concluded that the material weakness continues to exist, communicate that conclusion in writing to the audit committee. The proposed standard, however, did not require the issuance of a report. Rather, the proposed standard recognized that the auditor must consider this knowledge in connection with the auditor's responsibilities under Auditing Standard No. 2 to determine whether management's quarterly disclosures about internal control over financial reporting are not materially misleading.

B81. Several auditors who commented recommended that the proposed standard should require the auditor to issue an adverse report in the event that the auditor concludes that the material weakness continues to exist. One suggested that issuance of an adverse report would be necessary only if the auditor believed that the company had previously publicly disclosed that the material weakness had been addressed.

B82. The Board continues to believe that requiring the issuance of an adverse report to the company would serve no useful purpose in this circumstance because the company might not make such a report public. The Board believes, therefore, that requiring the auditor to communicate, in writing, with the audit committee his or her conclusion that a material weakness that was the subject of this engagement continues to exist would serve the same purpose as requiring the issuance of an adverse report. At the same time, such a requirement would provide the auditor with additional flexibility as to the form of communication that would be most meaningful to the audit committee. Regarding the potential for management to lead investors to incorrectly believe that the material

weakness no longer exists in its public disclosures, the Board believes that the federal securities laws, as well as auditor's existing responsibilities related to management's quarterly disclosures, are adequate safeguards to protect investors from misleading information.

B83. *No Distinction in Standard Between Unqualified and Adverse Opinion.* As discussed in the note to paragraph 43 of the standard, the standard no longer distinguishes between an unqualified and an adverse opinion. The auditor's opinion was revised to state that the material weakness exists or no longer exists. This revision is discussed further in the section ''Form of Auditor's Opinion'' and is now referred to in the standard as the auditor's opinion.

B84. *Inherent Limitations.* The inherent limitations paragraph of the auditor's report provided in the proposed standard discussed the inherent limitations of internal control over financial reporting overall, rather than the inherent limitations of the controls related to the material weakness being reported on.

B85. One commenter suggested that the inherent limitations paragraph was too broad for this engagement and needed to be modified to more accurately reflect the narrow focus of this type of engagement.

B86. The Board agreed that the inherent limitations paragraph, in this context, should be targeted to the specific controls identified in this auditor report. In addition, the Board continues to believe that the broader concept of inherent limitations in internal control over financial reporting overall is equally applicable. The inherent limitations paragraph in the auditor's report has been modified to reflect both of these conclusions.

B87. *Obtaining an Understanding of Internal Control Over Financial Reporting.* The proposed standard included a required report element stating that ''the engagement includes obtaining an understanding of internal control over financial reporting, examining evidence supporting management's assertion, and performing such other procedures as the auditor considered necessary in the circumstances.'' This language also was included in the example report included in the proposed standard.

B88. Several auditors expressed concern that the phrase, ''the engagement includes obtaining an understanding of internal control over financial reporting,'' implies that, as a part of the current engagement, the auditor spent a significant amount of time understanding internal control over financial reporting overall rather than carrying forward his or her understanding from the prior annual audit. These commenters believed this implication conflicted with the direction in the body of the proposed standard that an auditor who has audited the company's internal control over financial reporting within the past year in accordance with Auditing Standard No. 2 would be expected to have obtained a sufficient knowledge of the company and its internal control over financial reporting to perform this engagement. One commenter acknowledged that the proposed wording may be appropriate in cases in which a successor auditor is performing this engagement without previously gaining that understanding.

B89. The Board continues to believe that an auditor who has audited the company's internal control over financial reporting as of the company's most recent annual assessment in accordance with Auditing Standard No. 2 would be expected to have obtained a sufficient knowledge of the company and its internal control over financial reporting to perform an engagement to report on whether a previously reported material weakness continues to exist. To require a continuing auditor to update and document his or her understanding of internal control over financial reporting overall (to the full measure required by Auditing Standard No. 2) would be unnecessarily burdensome and costly. The Board modified the report element for a continuing auditor to clarify that the auditor previously obtained an understanding of internal control over financial reporting overall at the company and updated that understanding as it specifically relates to changes in internal control over financial reporting associated with the specified material weakness.

B90. The Board continues to believe, however, that a successor auditor that has not yet audited the company's internal control over financial reporting in accordance with Auditing Standard No. 2 would need to obtain a current understanding of internal control over financial reporting in connection with this engagement. Therefore, the report element described in the proposed standard is appropriate and has been retained for a successor auditor's reporting.

B91. *Example Reports.* The proposed standard included only one example report, which illustrated reporting on one material weakness by a continuing auditor when no additional material weaknesses were reported previously. Several commenters requested modification of the standard to address circumstances that the Board believed were already addressed by the proposed standard but were not illustrated in the single example report. Some commenters also made specific requests for additional example reports.

B92. The Board determined, after considering the nature of the comments, that additional example reports, while not covering all possible situations, would provide additional clarity to the various reporting situations. The Board selected three reports to illustrate most facets of the reporting provisions of the standard. Appendix A includes those reports.

Conforming Amendments to AT Sec. 101

B93. The proposed standard contained a proposed conforming amendment to AT sec. 101, *Attest Engagements.* The proposed conforming amendment would have required the proposed standard to be used, rather than AT sec. 101, for any engagements in which the subject matter is whether a material weakness continues to exist. This conforming amendment would have precluded the auditor from performing an agreed-upon procedures or review engagement (using AT sec. 101) when the subject matter of the engagement was whether a material weakness continues to exist.

B94. The Board received few comments related to the proposed conforming amendment. One auditor agreed that a conforming amendment to preclude a review-level attestation was appropriate when the subject matter was whether a material weakness continues to exist. This commenter went on to suggest, however, that there could be appropriate uses for an agreed-upon procedures engagement and that the Board should not preclude agreed-upon procedures from being performed under the Board's standards. Such reports, the commenter noted, would be restricted to the use of the specified parties who take responsibility for the sufficiency of the agreed-upon procedures for their purposes and, therefore, these reports would not generally be available to investors. Thus, these reports would not be a substitute for the engagements addressed in the proposed standard. Another commenter separately suggested broadly retaining the ability for the auditor to perform a review engagement when the subject matter is a previously reported material weakness.

B95. The Board continues to believe that investors and other report users in the public domain will be best served by the Board's standards permitting only

positive assurance (*i.e.*, an examination-level attestation) from the auditor when the subject matter is whether a material weakness continues to exist. The Board agrees, however, that private parties (such as audit committees) who wish to engage the auditor to perform specified procedures when the subject matter is whether a material weakness continues to exist should be allowed to negotiate such a private arrangement, as long as the results are not intended for public use. The Board, therefore, decided to modify the conforming amendment to AT sec. 101 of the Board's interim standards. As adopted, an auditor may not use AT 101 to report on whether a material weakness in internal control over financial reporting continues to exist for any purpose other than the company's internal use.

Conforming Amendment to PCAOB Auditing and Related Professional Practice Standards Resulting from the Adoption of the Auditing Standard No. 4—Reporting on Whether a Previously Reported Material Weakness Continues to Exist

Attestation Standards

AT sec. 101, Attest Engagements

AT sec. 101 is amended by adding as letter f. to paragraph .04, the following:

Engagements in which the practitioner is engaged to report on whether a material weakness in internal control over financial reporting continues to exist for any purpose other than the company's internal use. Such engagements must be conducted pursuant to PCAOB Auditing Standard No. 4, *Reporting on Whether a Previously Reported Material Weakness Continues to Exist*.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

(a) Purpose

Section 404 of the Act requires the management of public companies each year to file an assessment of the effectiveness of their companies' internal control over financial reporting. The company's independent auditor must attest to, and report on, management's assessment. Under the SEC's implementing rules, company management may not conclude that internal control over financial reporting is effective if one or more material weaknesses exists.

When a company reports a material weakness, investors may be left uncertain about the reliability of the company's financial reporting. Both companies and report users have recognized the importance of a mechanism for alerting investors that a previously disclosed material weakness no longer exists. A company may determine that disclosure under the framework already provided by the federal securities laws is sufficient for this purpose. Some investors and companies, however, have called for the ability to bolster confidence in management's assertions about those internal control improvements with the added assurance of the company's independent auditor. The Board, therefore, adopted an auditing standard that would be tailored narrowly to an engagement to report on whether a previously reported material weakness continues to exist.

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule describes a voluntary engagement that would be available but not required for any company that previously reported a material weakness in internal control over financial reporting. The Board believes that, in some situations, companies will find that auditor assurance that a material weakness no longer exists leads to a higher level of investor confidence in the company's financial reporting and that the costs of the engagement are therefore worth incurring. If a company believes, however, that these benefits may be outweighed in a particular case by the costs, or that the engagement is otherwise not in the company's interest, the company may (and presumably would) determine not to engage its auditor to perform this work.

C. Board's Statement on Comments on the Proposed Rule Received from Members, Participants or Others

The Board released the proposed rule for public comment in Release No. 2005–002 (March 31, 2005). A copy of Release No. 2005–002 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *www.pcaobus.org.* The Board received 30 written comments. The Board has clarified and modified certain aspects of the proposed rule in response to the comments it received, as discussed in Appendix B, *Background and Basis for Conclusions*, to the proposed rule.

III. Date of Effectiveness of the Proposed Rule 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 Board consents the Commission will:

(a) By order approve such proposed rule; or

(b) institute proceedings to determine whether the proposed rule 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 is consistent with the requirements of Title I of the Act. The Commission also requests specific comment on the following:

1. Are there unnecessary impediments to management's use of AS 4? Will it be used? What are the ways AS 4 should be changed, if any, to encourage appropriate use by management?

2. Under AS 4, management is permitted to select the date for its assertion that a material weakness no longer exists. Is it clear that such date may fall outside of the quarterly review period?

Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. PCAOB–2005–01 on the subject line.

Paper comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. PCAOB–2005–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCAOB.

All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB–2005–01 and should be submitted on or before January 20, 2006.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24498 Filed 12–29–05; 8:45 am]

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Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 101

Accounting and Financial Reporting for Public Utilities Including RTOs; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM04–12–000; Order No. 668]

Accounting and Financial Reporting for Public Utilities Including RTOs

Issued December 16, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to update the accounting requirements for public utilities and licensees, including independent system operators and regional transmission organizations (collectively referred to as RTOs). The Commission is also amending its financial reporting requirements for the quarterly and annual financial reporting forms for these entities. These updates to the Commission's Uniform System of Accounts and the financial reporting requirements will allow for better comparability between public utilities and will result in improved transparency of financial information and will facilitate better understanding of RTO costs.

DATES: *Effective Date:* The amended regulations will become effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT:

John Okrak (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8280.

Julie Kuhns (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6287.

Lodie White (Legal Information), Office of the General Council, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6193.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Discussion
A. General
B. Regional Transmission and Market Operation Asset Function
C. RTO Revenue Accounts
D. Regional Market Expense Function
E. Accounting by Public Utilities for Computer Hardware, Software and Communication Equipment
F. Accounting and Financial Reporting by Public Utilities, Including RTOs
1. Accounts for Load Dispatching, Scheduling and System Control Expenses
2. Accounts for System Planning and Standards Development
3. Accounts for Study Costs
4. Accounts for RTO Billings
5. Account for Revenue From Transmission of Electricity
6. Accounting for Settlement Amounts
7. Ministerial Filings
8. Cost Oversight
9. Other Matters
IV. Effective Date
V. Changes to the FERC Quarterly and Annual Report Forms
VI. Information Collection Statement
VII. Environmental Analysis
VIII. Regulatory Flexibility Act
IX. Document Availabilty

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

I. Introduction

1. In this Final Rule, the Commission is revising its Uniform System of Accounts (USofA) [1] to accommodate the restructuring changes that are occurring in the electric industry due to the availability of open-access transmission service and increasing competition in wholesale bulk power markets. Corresponding changes are being made to the FERC Form No. 1, Annual Report for Major Electric Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees (Form 1–F); and FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies (Form 3–Q).

II. Background

2. In April 1996, in Order No. 888,[2] the Commission established the foundation necessary to develop competitive bulk power markets in the United States: non-discriminatory open access transmission services by public utilities and standard cost recovery rules to provide a fair transition to competitive markets. Public utilities were also required to functionally unbundle, and to provide transmission service separately from generation services.

3. Despite the changes brought about by Order No. 888, reports of discriminatory practices by vertically integrated public utilities persisted. In Order No. 2000,[3] the Commission encouraged the formation of independent and regional organizations, to remedy undue discrimination and to foster regional efficiencies and efficient pricing. As a result, a number of independent system operators and regional transmission organizations (collectively referred to as RTOs) have formed and are in operation.[4] These RTOs perform many of the same activities previously performed by the transmission owners whose transmission systems they now operationally control. In addition, RTOs perform some unique functions, not traditionally performed by other public utilities, they oversee markets and they conduct long-term system planning on a regional basis.

4. On September 26, 2004, the Commission issued a Notice of Inquiry (NOI) in this proceeding.[5] The NOI invited comments on various matters including the Commission's accounting and financial reporting requirements for RTOs. The Commission received comments from RTOs, public utilities that are RTO members, state regulatory commissions, and others. Generally, commenters agreed that the existing accounting regulations and related financial reporting requirements do not provide sufficient detailed information about RTO-related costs, including the costs incurred by RTOs and other relevant information concerning the types of services RTOs provide to their members. On June 3, 2005, the Commission issued a Notice of Proposed Rulemaking (NOPR) in response.[6] The Commission received

[1] 18 CFR Part 101.

[2] *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12,274 (March 14, 1977), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group,* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[3] *See Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 of Snohomish County, Washington,* v. *FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[4] *See, e.g.*, the California Independent System Operator Corporation (CAISO), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the ISO New England, Inc. (ISO-NE), the New York Independent System Operator, Inc. (NYISO), PJM Interconnection, L.L.C. (PJM), and the Southwest Power Pool, Inc. (SPP).

[5] *See Financial Reporting and Cost Accounting and Recovery Practices for Regional Transmission Organizations and Independent System Operators*, 69 FR 58,112 (September 29, 2004), FERC Stats. & Regs. ¶ 35,546 (2004).

[6] *Accounting and Financial Reporting for Public Utilities Including RTOs*, 70 FR 36865 (June 27, 2005); FERC Stats. and Regs. ¶ 32,585.

comments from RTOs, public utilities that are RTO members, and others.[7]

5. Today, the Commission is issuing this Final Rule to address the accounting and financial reporting issues raised in the NOPR and the comments to the NOPR. The changes to the Commission's accounting and financial reporting requirements adopted here will provide uniformity and transparency in accounting for and reporting of transactions and events affecting public utilities, including RTOs. The Commission expects that these changes in accounting and financial reporting will also lead to improvements in cost recovery practices by providing details concerning the cost of RTO functions, and increased assurance that the costs are both legitimate and reasonable costs of providing service and assigned to the correct period for recovery in rates.

III. Discussion

A. General

6. The Commission received 22 comments on the proposed accounting and reporting requirements which ranged from favorable to falling short of the proposal's intended goal of providing greater transparency for transactions and business functions. Most commenters, however, generally commend and support the Commission's proposed initiative to amend its regulations to update the accounting requirements for public utilities, including RTOs.[8] After careful consideration of the comments received, the Commission is adopting the changes and revisions as proposed with certain modifications and clarifications as discussed below.

B. Regional Transmission And Market Operation Asset Function

1. Accounting NOPR

7. In the NOPR, the Commission proposed to create a new asset function entitled Regional Transmission and Market Operation Plant to record RTO investments in computer hardware, software and communication equipment.[9] The proposed new accounts in this function are Account 380, Land and Land Rights; Account 381, Structures and Improvements; Account 382, Computer Hardware; Account 383, Computer Software; Account 384, Communication Equipment; Account 385, Miscellaneous Regional Transmission and Market Operation Plant; Account 386, Asset Retirement Costs for Regional Transmission and Market Operation Plant; and reserves Account 387 for future accounts.

2. Commenters

8. Commenters were generally supportive and did not oppose the creation of the Regional Transmission and Market Operation Asset Function. One commenter recommended breaking down each new asset account into sub-accounts for general purpose activities, market design development, and market operation.[10]

3. Commission Conclusion

9. The Commission will adopt the Regional Transmission and Market Operation Asset Function as proposed in the NOPR: Account 380, Land and Land Rights; Account 381, Structures and Improvements; Account 382, Computer Hardware; Account 383, Computer Software; Account 384, Communication Equipment; Account 385, Miscellaneous Regional Transmission and Market Operation Plant; Account 386, Asset Retirement Costs for Regional Transmission and Market Operation Plant; and reserves Account 387 for future accounts. The Commission notes that in order to perform many of their primary functions, RTOs must make significant investments in computer hardware, software and communication equipment. The cost of these assets is not explicitly addressed in the existing primary plant accounts, resulting in inconsistent accounting and reporting for these assets. In order to provide more financial transparency and consistent accounting and reporting for the costs of hardware, software and communication equipment, the Commission believes a new utility plant function is needed to record the cost of assets owned and used by RTOs.

10. The Commission does not believe sufficient justification has been advanced to expand the proposed new accounts further as suggested by commenters. The new accounts adopted herein will provide the Commission and others with additional, more detailed information than is currently available about the major types of assets needed to perform region-wide transmission and market operations. These assets perform joint functions and at this point the Commission believes it may be unduly burdensome to allocate the costs of these assets in greater detail.

C. RTO Revenue Accounts

1. Accounting NOPR

11. Revenues RTOs receive for the reimbursement of their operational costs are not addressed in the current USofA because the existing revenue accounts were designed principally to record revenues from electricity sales on a bundled basis. Therefore, the Commission proposed the creation of two new revenue accounts to record amounts billed by RTOs to their members.[11] The first, Account 457.1, Regional Transmission Service Revenues, would include revenues received by RTOs for services provided and amounts billed under each Commission-approved tariff. The second, Account 457.2, Miscellaneous Revenues, would include revenues received from incidental transactions and events, such as profits or losses on sales of miscellaneous materials.

12. The Commission also proposes to include a new Form 1 Schedule to report the revenue collected by RTOs for services performed pursuant to Commission-approved tariffs.

2. Commenters

13. Commenters are generally supportive of the proposed accounting for RTO revenue accounts.[12] However, one commenter suggests that the Commission should create a mechanism and account for all revenues and costs arising from managed market services and operations.[13]

14. Another commenter asserts that RTO constituents have the right to know how much of their RTO's revenues derive from penalties assessed by the RTO.[14] The commenter thus asserts that a new series of accounts should be created to record RTO's revenue from penalties assessed against market participants. According to the commenter, these accounts should be further augmented by another, separate new sub-account for neutrality charges assessed by the RTO.

3. Commission Conclusion

15. We will adopt Account 457.1, Regional Transmission Service Revenues, Account 457.2, Miscellaneous Revenues, and the RTO Revenue Schedule as proposed in the NOPR. The Commission declines to adopt the recommendation to amend the USofA to require RTOs to record revenues on their books and records for energy products, services and

[7] *See* Appendix A for list of commenters.

[8] *See generally* National Grid, NRECA, Indicated NYTOs, and TANC.

[9] NOPR at P 20–32.

[10] City of Santa Clara at 23.

[11] NOPR at P 33–35.

[12] *See, e.g.*, APPA at 19, ISO/RTO Council at 2.

[13] *See* TANC at 12.

[14] *See* SVP at 20.

commodities associated with services that RTOs manage for market participants. In these instances, an RTO acts as an agent in providing these services; it does not realize or earn revenue on these transactions. The RTO merely collects monies from one member or participant and remits it to another member or participant. For example, when a member or participant purchases energy through an RTO managed centralized energy market, the RTO merely collects monies from the purchaser of the energy and remits it or passes it through to the appropriate energy supplier, who then records it as revenue.

16. We also decline to adopt the recommendation to amend the USofA to create separate sub-accounts of Account 457 to record penalty and neutrality revenues. According to the instructions of the new RTO revenue accounts, RTOs are to maintain records showing revenues received from customers by type of charge. RTOs then must report any penalty and neutrality revenues received on the newly-created RTO Revenue Schedule adopted herein, providing adequate disclosure of these revenues.

D. Regional Market Expense Function

1. Accounting NOPR

17. In the NOPR, the Commission explained that the current USofA does not provide sufficient financial transparency concerning the types of costs incurred by RTOs in facilitating and monitoring energy markets. In order to address this deficiency the Commission proposed creating a separate new expense function within the USofA to capture these types of costs in greater detail.[15] As part of this new function, the Commission proposed the creation of certain operating expense accounts to capture the costs of managing the various RTO markets and reviewing market data to determine compliance with market rules. These accounts are Account 575.1, Operation Supervision; Account 575.2, Day-Ahead and Real-Time Market Facilitation; Account 573.3, Transmission Rights Market Facilitation; Account 575.4, Capacity Market Facilitation; Account 575.5, Ancillary Services Market Facilitation and Account 575.6, Market Monitoring and Compliance.

18. Additionally, new accounts were proposed to capture and provide greater detail as to the amount of maintenance expense incurred on computer hardware, software, communication equipment and other assets owned and used by RTOs. These accounts are Account 576.1, Maintenance of Structures and Improvements; Account 576.2, Maintenance of Computer Hardware; Account 576.3, Maintenance of Computer Software; Account 576.4, Maintenance of Communication Equipment and Account 576.5, Maintenance of Miscellaneous and Market Operation Plant.

19. Finally, the Commission proposed that RTOs report in Form 1 the data required by the Transmission of Electricity for Others schedule [16] to provide more complete information concerning the use of the transmission system under the control of the RTO.

2. Commenters

20. Most commenters did not object to the Commission's proposal to create a new regional market expense function.[17] However, some commenters suggest that the Commission clarify that the regional market expense function accounts apply solely to RTOs, as the proposed new regulatory text contained in the NOPR does not make this clear.[18] Additionally, one commenter suggests that the Commission change the descriptive caption of this function from ''regional market operations expense'' to ''market operations expense.'' [19] This commenter submits that these accounts should not be limited to RTOs, as other public utilities in the future may use market oriented approaches to provide these services.

21. One commenter also suggests that the word ''facilitation'' in the title of Accounts 575.2, 575.3, 575.4 and 575.5, be changed to ''administer'' as RTOs administer or operate organized markets while ''facilitation'' describes a more passive role than is the case.[20]

22. Additionally, one commenter suggests that the Commission require RTOs to record and report revenues and expenses related to the cost of energy, energy products, services and commodities that RTOs manage or provide to market participants.[21] Another commenter suggests that RTO customer service costs be recorded separately in a newly-created account; [22] customer service costs are a significant component of RTO expense identified by public utilities and it is important for RTO/non-RTO customer services expenses to be segregated.

23. Finally, most commenters did not object to the proposal to require RTOs to report the data required by the Form 1 Transmission of Electricity for Others schedule. However, one commenter asserts that RTOs do not currently organize transaction data in a way that would allow them to report the information called for by the schedule.[23] This commenter notes that RTOs treat most service in their footprint as network service and as such can only report aggregate flows without transaction specific source and sink information. The commenter contends that absent extremely expensive software and design changes RTOs will not be able to fully report the information called for on the schedule. The commenter recommends that the Commission not include this requirement in the Final Rule or in the alternative clarify that aggregate flow data will be acceptable.

3. Commission Conclusion

24. The Commission will adopt the regional market expense function and accounts proposed, as modified and clarified below. Upon additional consideration, the Commission clarifies that any jurisdictional entity, whether an RTO or a non-RTO public utility, must use the regional market expense accounts if a regional market expense is incurred. The key for recording costs in these accounts is not whether an entity is an RTO or not, but whether an entity is performing market services on a region-wide basis. The accounts are intended to capture costs incurred in performing region-wide services related to market administration, market monitoring and market compliance activities whether performed by an RTO or another non-RTO public utility. These accounts are not limited to RTOs, as other non-RTO jurisdictional entities may provide these market services, and the costs incurred by these other non-RTO jurisdictional entities in performing these services must be captured in these accounts. The Commission will add a definition of regional market to the USofA to make clear which type of entities are to use the regional market expense function accounts. The Commission clarifies that regional market expense accounts are to be used not only by RTO/ISO public utilities but by any public utility that operates an organized energy market, whether directly or through a contractual relationship with another entity.

25. The Commission will modify the account titles and instructions to replace the word ''facilitation'' with ''administer'', as we agree with the

[15] NOPR at P 36–51.

[16] *See* FERC Form 1 at 328–330.

[17] *See, e.g.*, ISO/RTO Council at 2.

[18] *See, e.g.*, EEI at 2.

[19] *See* APPA at 18.

[20] APPA at 19.

[21] TANC at 2 and SVP at 27.

[22] NRECA at 8.

[23] *See* ISO/RTO Council at 5.

commenter that it is more descriptive of the role RTOs play (and others may play) in market operations.

26. The Commission declines to adopt commenter recommendations to amend the USofA to require the RTOs to record expenses on their books and records for energy products, services and commodities associated with services that RTOs manage for market participants. As previously discussed, an RTO acts as an agent and does not take title to energy products, services and commodities associated with services in the performance of these managed services. The RTO merely collects monies from one member or participant and remits it to another member or participant.

27. The Commission also declines to adopt one commenter's suggestion to create new accounts to separately record RTO customer service costs. Our existing accounting rules contain customer service expense accounts for recording costs of this nature, Accounts 901–910 (Customer Accounts and Customer Service Accounts). RTOs are required to record their customer service expenses in the appropriate existing customer service accounts. Therefore, it is not necessary to create new accounts for this purpose.

28. One commenter asserts that RTOs cannot provide all of the information required on the Form 1 Transmission of Electricity for Others schedule absent costly software changes to their systems; most of the transmission service in their footprint is network service and as such RTOs do not currently maintain transaction specific source and sink information in a format needed to complete the schedule. However, RTOs can provide aggregate power flow information for the transmission facilities under their control.

29. We will, therefore, require RTOs to report aggregate transmission usage information for imports into the RTO from other systems, exports from the RTO, through and out service, network service and point-to-point service. We will also require RTOs to report related financial information by type of service, such as network and point-to-point service. These changes we adopt herein will give the Commission more complete information concerning the use of the transmission system under the control of RTOs, without requiring RTOs to make costly software changes. We will require the transmission usage information to be reported on a new Form 1 and Form 3–Q schedule entitled Monthly ISO/RTO Transmission System Peak Load and the related financial information on a newly created schedule entitled Transmission of Electricity by RTOs, rather than have RTOs report the information on the Form 1 Transmission of Electricity for Others schedule which is not a good fit for reporting this aggregate information.

30. In examining the new regional market expense function, we recognize a rent account is needed to capture the expenses associated with renting assets to perform regional market functions to be consistent with our other function classifications. Therefore, we will also add a new account entitled Account 575.8, Rents, to capture rent costs in the regional market expense function.

E. Accounting by Public Utilities for Computer Hardware, Software and Communication Equipment

1. Accounting NOPR

31. In the NOPR, the Commission proposed to add three new sub-accounts to the existing transmission asset function for public utilities and licensees, other than RTOs, to record the cost of computer hardware, software and communication equipment owned and used for transmission related activities.[24] The Commission proposed to create Account 351.1, Computer Hardware, Account 351.2, Computer Software, and Account 351.3, Communication Equipment, so as to provide uniform and consistent accounting and reporting for these types of assets by non-RTO public utilities and licensees.

2. Commenters

32. Commenters generally argue that the proposed changes would impose a significant burden on companies; [25] companies will face a complex undertaking in identifying what portions of their computer hardware, software and communications equipment and operation and maintenance costs belong in the new transmission accounts because most companies rely on such hardware, software, and equipment for multiple purposes.[26] One commenter suggests that the Commission appears to have overlooked the fact that public utilities perform many more functions than simply transmission functions.[27]

33. Commenters assert that the new accounts for computer equipment and computer use will require judgments as to disaggregation and assignment of these costs among different accounts [28]—costs that are not necessarily severable and directly assignable. Commenters also assert that these allocations will be unnecessarily arbitrary and the Commission's desire for comparability will never be achieved.[29]

34. Commenters recommend that, due to the extreme burden the proposed changes would place on public utilities, these changes should be applied only to RTOs, whose sole business is related to performing transmission functions.[30] Commenters note that the RTOs' primary function is the administration of transmission systems and the use of their hardware, software and communication equipment is more easily identifiable as transmission related.[31]

35. Commenters also suggest that, if the Commission retains the proposed new computer and communication equipment accounts for use by licensees and public utilities other than RTOs, that it provide companies the flexibility to make reasonable allocations to the new accounts and other accounts in the USofA, including the general plant accounts.[32] Commenters also suggest that companies should be able to adopt the new accounts in a way that makes sense given their circumstances, with as little extra effort as possible, without having to perform complex allocations, and without having to modify prior accounting records and reports.

36. Another commenter suggests that new sub-accounts should be set up to record the additional computer hardware, software and communications equipment required to interface with the RTO.[33] This commenter suggests that these sub-accounts should record and disclose the amount of information and technology and communications spending that relates specifically to the public utility's RTO interface.

37. Finally, one commenter also notes that the Commission proposes to add new sub-accounts to Account 569, Maintenance of Structures, namely Account 569.1, Maintenance of Computer Hardware, Account 569.2, Maintenance of Computer Software, and Account 569.3, Maintenance of Communication Equipment. The commenter suggests that the more appropriate account for these sub-accounts would be Account 573, Maintenance of Miscellaneous Transmission Plant (Major only),

[24] NOPR at P 52–53.

[25] *See* EEI at 4, SCE at 2, FirstEnergy at 8.

[26] EEI at 9.

[27] SCE at 2.

[28] International Transmission at 5.

[29] FirstEnergy at 17.

[30] SCE at 3.

[31] FirstEnergy at 16.

[32] EEI at 9.

[33] SVP at 35.

making them sub-accounts Account 573.1 though Account 573.3.[34]

3. Commission Conclusion

38. The great majority of commenters disagree with the NOPR's proposed accounting for computer hardware, software and communication equipment by public utilities and licensees other than RTOs. These commenters argue that these assets are not necessarily severable and directly assignable. They point out that the equipment and software in question perform many different functions and that it would be extremely difficult to determine what portion of the equipment and software perform a transmission function. These commenters also argue that individual utilities may use different allocation methods to determine the portion of these items used in transmission, which will reduce comparability among utilities and therefore the usefulness of the reported accounting information. Finally, these commenters contend that it will be burdensome and costly to implement the proposed changes and that minimal reporting benefits will be derived from the change.

39. The Commission acknowledges that some or perhaps most computer hardware, software and communication assets are joint use assets that may not be severable or directly assignable to the transmission function. We agree with commenters that requiring entities to record that portion of their investments in these assets used for transmission purposes within the transmission function on an allocated basis is problematic in that functional reclassification of the investment, as well as the related depreciation reserve, would be required each accounting period as the allocation factor changes. Therefore, we have decided not to adopt proposed Accounts 351.1, 351.2 and 351.3 for public utilities and licensees other than RTOs and will continue to allow non-RTO public utilities to account for these items as joint use assets as they have historically done. However, we will require both RTOs and non-RTO public utilities to record the costs of maintaining these assets that are related to providing transmission services in Accounts 569.1, 569.2 and 569.3 as proposed. Non-RTO public utilities already allocate these joint use costs for ratemaking purposes in determining open access transmission rates. We will now also require that public utilities allocate these costs for accounting purposes.

40. Allocation approaches used by public utilities must ensure that a reasonable portion of the cost of maintaining these joint use assets are used in the transmission of electricity are allocated to the transmission function. Additionally, public utilities are also expected to allocate these costs to the transmission function on a consistent basis from year to year. Public utilities will be required to footnote their allocation method used to calculate these maintenance expenses as reported in the Form 1 Electric Operation and Maintenance Expenses Schedule (pages 320–323).

41. Finally, we decline to adopt one commenter's suggestion that instead of adding sub-accounts to Account 569, Maintenance of Structures, that we add sub-accounts to Account 573, maintenance of Miscellaneous Transmission Plant, for the maintenance costs related to computer hardware, software and communication equipment. The commenter provides no explanation for the proposed change and we see no benefit in deviating from the account structure originally proposed.

F. Accounting and Financial Reporting by Public Utilities, Including RTOs

1. Accounts for Load Dispatching, Scheduling and System Control Expenses

i. Accounting NOPR

42. In the NOPR, the Commission proposed to replace Account 561, Load Dispatching, with a series of detailed expense accounts to record expenses for providing transmission services related to load dispatching, scheduling and system control.[35] The proposed accounts are Account 561.1, Load Dispatch-Reliability, to include the costs incurred to manage the region-wide reliability coordination function; Account 561.2, Load Dispatch-Monitor and Operate Transmission System, to include the costs incurred to monitor, assess and operate the transmission system and ensure the system's reliability and Account 561.3, Load Dispatch-Transmission Service and Scheduling, to include the costs incurred to process hourly, daily, weekly and monthly transmission service requests using an automated system such as an Open Access, Same-Time Information System (OASIS).

ii. Commenters

43. One commenter asserts that the Commission should not apply the proposed USofA changes to transmission owners that are members of an RTO or ISO, as doing so will increase the cost to consumers for the implementation of these systems, while providing little additional information to the Commission.[36] This commenter also asserts that it may be difficult to disaggregate expenses among the proposed new Load Dispatch sub-accounts (561.1, 561.2, and 561.3), because the same staff members may perform functions included under more than one of these sub-accounts, tasks undertaken to accomplish functions relevant to one sub-account may also contribute to completion of another, and the descriptions of the sub-accounts are insufficiently detailed.[37] This commenter further asserts that if the Commission does decide to apply the proposed USofA changes to utilities that are members of RTOs and ISOs, it should allow those utilities to apply for a waiver to allow consolidated reporting of load dispatch expenses if they fall below a *de minimus* threshold.[38]

44. Another commenter asserts that the lines of demarcation between costs in these sub-accounts are not clear and that the Commission should provide additional guidance on its intention as to information to be captured in these sub-accounts.[39] Yet another commenter notes that, while it supports the Commission's goal of greater cost transparency, it similarly recommends that the Commission provide further guidance so that the useful cost comparisons that the Commission is seeking to facilitate can be made across RTOs and public utilities.[40] This commenter asserts that the addition of accounts to reporting forms will be of little use if users are not populating those accounts with comparable costs and information. This commenter recommends that the Commission provide additional guidance regarding the specific information it would like captured in these sub-accounts.

45. One commenter supports the specific account structure the Commission proposes, as well as its applicability to both RTOs and non-RTO public utilities. However, that commenter suggests the Commission realign the grouping of the new accounts under two new functions (system control and transmission services) that it proposes should be created.[41]

46. Finally, a commenter notes that, in the text of the NOPR's discussion of Accounts 561.1, 561.2 and 561.3, the

[34] EEI at 9.

[35] NOPR at P 54, 56–59.

[36] NYTOs at 2.

[37] *Id.* at 7.

[38] *Id.* at 10.

[39] EEI at 8.

[40] International Transmission at 3.

[41] APPA at 19.

NOPR states that these proposed accounts are for use by both non-RTO public utilities and RTOs.[42] However, in the proposed text of the USofA for Accounts 561.1, 561.2 and 561.3, the proposed language specifically states that the accounts are to include expenses incurred by the regional transmission service provider, with no mention in the proposed text of non-RTO public utilities. The commenter suggests that the Commission revise the proposed text of the USofA for proposed Accounts 561.1, 561.2 and 561.3 to specifically state that the accounts may be used by RTOs, other public utilities and licensees, consistent with the NOPR's language.

iii. Commission Conclusion

47. The proposed accounts for recording load dispatch, scheduling and system control expenses provide greater transparency concerning the types of costs incurred by both RTOs and non-RTO public utilities in providing transmission services. Therefore, we will adopt the proposed accounting for load dispatch, scheduling and system control expenses. However, based upon the comments received, we will adopt the proposed accounting with certain clarifications and modifications as discussed below.

48. The instructions to Accounts 561.1, 561.2 and 561.3 are revised to make clear that the accounts are to be used by both RTOs and non-RTO public utilities. Additionally, the items list of Account 561.2 has been revised to include certain items included in replaced Account 561, Load Dispatching, which were inadvertently not included on the list. These modifications add clarity as to which entities are to use the accounts and what types of costs are to be recorded in the load dispatch, scheduling and system control expense accounts.

49. We will not adopt one commenter's suggestion to realign the newly created accounts under its suggested new functions: system control and transmission service. The expanded expense accounts contained in the transmission function provide the requisite transparency concerning the activities and related costs incurred by public utilities, including RTOs, in providing transmission service for ratemaking and other Commission purposes. Moreover, the account structure appropriately herein adequately separates market service and transmission service activities.

50. Finally, we clarify that, to the extent that RTOs and non-RTO public utilities perform the same activities for load dispatch, scheduling and system control, then the costs of those activities should be accounted for in the same manner and recorded in the same accounts. For example, if an RTO incurs costs to manage the region-wide reliability coordination function it would record those costs in Account 561.1. Likewise, if a non-RTO public utility happens to incur costs to manage the reliability coordination function for third parties, it would also record those costs in Account 561.1.

2. Accounts for System Planning and Standards Development

i. Accounting NOPR

51. In the NOPR, the Commission proposed to add a new Account 561.5, Long-Term Reliability Planning and Standards Development, to record the costs incurred by RTOs for performing long-term system planning and standards development.[43]

ii. Commenters

52. Some commenters request clarification of the Commission's proposed changes.[44] These commenters suggest that the definition provided in the NOPR does not provide a definitive basis to identify the costs to be recorded in this account because planning can be interpreted to have several meanings. National Grid requests that the Commission recognize that the scope of costs covered by Account 561.5 is likely to vary from region to region and clarity should be provided about the meaning of ''long-term system planning.'' They explain that transmission planning occurs over several different time-scales such as short-term planning to intermediate planning to long term planning.[45] Indicated NYTOs request a waiver for transmission owners that are RTO members to allow consolidated reporting of de minimus amounts or alternatively guidance on the specific expenses to be recorded in the account.[46]

53. Other commenters support the proposed changes but believe the Commission should require additional accounts to offer more transparency and comparability. Specifically one commenter believes that Account 561.5 should be augmented by additional accounts for the portion of system planning, development and maintenance expenses that relate to market design initiatives and activities of RTOs, as opposed to control area operation.[47]

54. Finally, one commenter believes that the structure of this new account allows for inclusion of generation-related costs such as resource planning.

iii. Commission Conclusion

55. As the Commission explained in the NOPR, the existing USofA does not provide a specific expense account to record expenses for system planning and development activities. The Commission will adopt Account 561.5 as proposed as modified and discussed below. Commenters raise questions about the scope of planning costs that are to be recorded in Account 561.5 and how to record costs incurred relative to the different transmission planning time-scales, such as short-term, intermediate-term, and long-term. We will modify the instructions to Account 561.5 to allow inclusion of all transmission system planning time-scale planning costs, not just long-term planning. We will therefore modify the title of the account to Account 561.5, Reliability, Planning and Standards Development, to reflect the fact that planning costs other than long-term are to be recorded in Account 561.5.

56. RTOs are directed to report costs of system planning, development, and maintenance expenses in Account 561.5. We clarify to the extent that public utilities and licensees that are not RTOs perform similar activities; they should also include the costs that they incur for system planning and standards development in Account 561.5. We also clarify that all system planning and standards development costs recorded in this account are to be transmission related.

57. The Commission declines at this time to augment Account 561.5 with additional accounts for the portion of system planning, development and maintenance expenses that relate to market design initiatives and activities of RTOs, as opposed to control area operation. We have created a new regional market expense function and all market planning and development costs shall be recorded in the appropriate market expense account based on the nature of the planning and development costs incurred.

3. Proposed Accounts for Study Costs

i. Accounting NOPR

58. The USofA does not specially provide accounts for recording costs incurred to perform generation interconnect and transmission service studies. Therefore, the Commission

[42] *See* SCE at 3.

[43] NOPR at P 60–62.

[44] *See, e.g.*, National Grid at 9–10.

[45] National Grid at 9–10.

[46] *See* Indicated NYTO at 9–10.

[47] *See* City of Santa Clara, California at 21–22.

proposed to create Account 561.6, Transmission Service Studies, to record the costs incurred by public utilities and licensees, including RTOs, to conduct studies for transmission service requests. The Commission also proposed to add a new Account 561.7, Generation Interconnection Studies, to record the costs incurred by public utilities and licensees, including RTOs to conduct studies for generator service requests.[48]

59. Additionally, in order to provide more disclosure concerning the costs of interconnect study activities being performed by public utilities and licensees, including RTOs, the Commission proposed to add a new schedule to the quarterly and annual financial reports that will provide more specifics concerning the costs of these activities.[49]

ii. Commenters

60. Commenters were of divergent views regarding the Commission's proposal to record costs to perform generation interconnect and transmission service studies in Account 561.6 and Account 561.7. Commenters state that it is not clear whether the proposed shift in accounting treatment of study costs could affect the billable or capital treatment of the underlying study costs. Commenters state that the costs of transmission service studies and generator interconnection studies are largely reimbursed by customers or folded into the capital accounting for transmission projects or upgrades, and would only be expensed in rare circumstances.[50] One commenter requests that the Commission clarify that the new expense accounts for study costs are not intended to cover all study costs, but only those costs that are neither reimbursed by customers nor capitalized. Alternatively, this commenter requests clarification that utilities may still charge out or capitalize such study costs as they have in the past.[51] Another commenter requests that the Commission exempt RTO member utilities from the proposed USofA changes for study costs because it provides little additional information. Alternatively, this commenter requests a waiver to eliminate reporting study costs in Account 561.6 and Account 561.7 because the costs are largely reimbursed by the RTO and will appear in the RTO financial reports. Additionally, this commenter requests that the cost of transmission service and generator interconnect studies be treated as capital expenditures.[52]

iii. Commission Conclusion

61. The Commission will adopt the proposed accounts for recording generation interconnection and transmission service study costs as clarified below. We clarify that Accounts 561.6 and 561.7 are only to be used to record the costs incurred by public utilities, including RTOs, to conduct studies for transmission service requests and generator service requests, respectively, when the costs are not directly reimbursable by a specific customer and the costs are otherwise charged to expense under the USofA.

62. Additionally, we clarify that the Commission did not propose any change and does not do so now related to the recording of the costs of conducting transmission and generation interconnect studies in Account 186, Miscellaneous Debits, by public utilities, including RTOs, pending reimbursement by the entity requiring the service. We further clarify that the Commission did not intend to change any capitalization requirements related to study costs. Public utilities are to continue to follow the Commission's existing rules and regulations for cost capitalization.

4. Accounts for RTO Billings

i. Accounting NOPR

63. In the NOPR, the Commission proposed to create three new sub-accounts in order to provide greater transparency for the payments made by public utilities and licensees to RTOs. The three new proposed sub-accounts are Account 561.4, Scheduling, System Control and Dispatching Services; Account 561.8, Reliability Planning and Standards Development Services; Account 575.7, Market Facilitation, Monitoring and Compliance Services.[53] The proposed new sub-accounts will be used by public utilities and licensees to record their share of costs billed to them by an RTO. Additionally, the Commission proposed that each RTO include in its monthly settlement statements a breakdown of the allocation of that RTO's operational costs within each of the three sub-accounts discussed below.

ii. Commenters

64. Commenters generally agree that non-RTO public utilities should record in separate sub-accounts the charges paid to RTOs and suggest that the Commission add more sub-accounts to separately disclose additional costs incurred by non-RTO public utilities.[54]

65. One commenter seeks clarification of the Commission's intent with respect to proposed Account 575.7 Market Facilitation, Monitoring and Compliance Services.[55] This commenter questions if the Commission intends that only costs billed to utilities by the RTOs be included in this account, not including costs by utilities performing functions that meet the description of the account. The commenter explains that decisions made regarding rate recovery of Balancing Authority costs by transmission owners are likely to depend heavily on how relevant costs are recorded and requests that the Commission clarify that Account 575.7 is only applicable to costs billed to utilities by RTOs.

66. Finally, one commenter requests that the Commission not adopt an absolute rule that information on the three new cost sub-accounts be part of the settlement statements.[56] This commenter believes it will be expensive to include such cost breakdowns in monthly customer settlement statements. This commenter states that RTOs have sophisticated billing software that is not easy to modify and that a number of RTOs would have to make expensive and time-consuming changes to their billing systems in order to incorporate the required cost information directly into monthly settlement statements. This commenter suggests that a more flexible approach would recognize the reality that different RTOs have different software capabilities and allow each entity to comply with the Commission's requirement in their own efficient way.

iii. Commission Conclusion

67. The Commission will adopt the new accounts for RTO billings proposed in the NOPR with the modification discussed below. As the Commission explained in the NOPR, these new accounts will allow each RTO member to record its share of the RTO's total monthly operating costs in these new sub-accounts. The Commission will also require each RTO provide a breakdown of the allocation of that RTO's operational costs within each of the three sub-accounts. However, the Commission will not require RTOs to include this information in its monthly settlement statements because of software costs to implement changes to

[48] NOPR at P 63.

[49] *Id.* at P 64.

[50] National Grid at 10–12, Indicated NYTOs at 6–10.

[51] National Grid at 10–12.

[52] Indicated NYTOs at 6–10.

[53] NOPR at P 65–68.

[54] *See* City of Santa Clara, California at 25–26, EEI at 7–8.

[55] First Energy at 17.

[56] *See* ISO/RTO Council at 3–4.

the RTO billing systems. Instead, the Commission will permit RTOs to use another format to provide the information to its members. However, RTOs are nevertheless directed to provide a breakdown of the cost allocation to the three new sub-accounts on the date the billings are issued.

68. The Commission also clarifies that Account 575.7 is to be used only for costs billed to utilities by RTOs for market administration, monitoring and compliance services.

5. Account for Revenue From Transmission of Electricity

i. Accounting NOPR

69. In the NOPR, the Commission proposed to add a new sub-account to Account 456, Other Electric Revenues, in order to provide greater transparency by transmission owners for the revenues received for use of their transmission facilities.[57]

ii. Commenters

70. Commenters were generally supportive, but request that the Commission provide additional clarification.[58] One commenter requests that the Commission provide even more transparency regarding the particular sources of those revenues and how they relate to common ratemaking categories. This commenter suggests the Commission implement accounting for transmission revenues that would enable customers and the Commission to monitor whether previously accepted rates generate more than an appropriate level of revenues. This commenter requests that the Commission remedy its accounting and reporting, in this proceeding, to keep pace with standard ratemaking practice so that Form 1 information provides accounting data for direct ratemaking use.[59] Another commenter requests the Commission clarify that non-RTO public utilities should use the new Account 456.1 for transmission service revenues and existing Account 456 for miscellaneous revenues.

iii. Commission Conclusion

71. The Commission will adopt the new sub-account as proposed in the NOPR. The new Account 456.1, Revenues From Transmission of Electricity of Others, will include revenues the transmission owner receives for the transmission of electricity over its transmission facilities. This new account will provide greater transparency with respect to the revenues received by transmission owners for use of their transmission facilities. We also clarify that revised Account 456 is to be used for recording non-transmission miscellaneous operating revenues.

6. Accounting for Settlement Amounts

i. Accounting NOPR

72. In the NOPR, the Commission proposed that public utilities or licensees that conduct energy transactions through an RTO that requires participants to bid their generation into the market and buy generation to supply their native load report these transactions on a net basis in Account 555, Purchased Power.[60] The Commission also invited comment as to what circumstances would be appropriate for a public utility or licensee to reflect these types of transactions on a net basis, and under what circumstances would it be appropriate for a public utility or licensee to reflect these types of transactions as distinct purchases and sales.

ii. Commenters

73. Two commenters do not support the netting of transactions that flow through RTO energy markets.[61] One of these commenters argues that for accounting and tax purposes, purchased power should, on financial statements, represent only purchased power. This commenter also asserts that its members that are subject to Rural Utilities Service (RUS) oversight need to be able to report gross amounts of energy sales to RUS. This commenter further asserts that it will be difficult for cooperatives to determine income for income tax purposes if only net transactions are reported.[62] The other commenter argues that showing only the net position of a market participant may understate the use of RTO energy markets and mask situations where a utility is a net seller during one period but a net buyer in another period. This commenter also notes that netting would not reveal the effects of time and location-specific variation in energy prices, yielding only incomplete results that are unlikely to be meaningful.[63]

74. Most other commenters, however, generally agree that these transactions should be reported on a net basis.[64] One commenter submits that reporting these types of transactions on a gross basis might give an inaccurate picture of an entity's size and its actual revenue-generating activities.[65] This commenter suggests that accounting for transactions settled through RTO markets on a net basis more accurately reflects what similarly situated utilities would be doing in the absence of RTO markets. This commenter also suggests that accounting on a gross basis would cause it to incur an artificially large gross receipts tax liability which would act as a deterrent to participation in RTO markets. This commenter further suggests that accounting for these transactions on a net basis is in accord with traditional accounting principles regarding whether to record transactions on a gross or net basis.

75. Some commenters support netting, but believe that it is inappropriate to report net sales in Account 555.[66] These commenters assert that net sellers of generation should report the transactions in Account 447, Sales for Resale, and that net purchasers should report the transactions in Account 555, Purchase Power. One commenter notes that consistent with the reporting methodology of its RTO it reports sales and purchases of power on an hourly net position basis. For each hour that the company is a net seller of power, the commenter states that it reports the net amount in Account 447; conversely, if it is net buyer of power, it reports the net amount in Account 555. In each monthly reporting period, the commenter notes that the hourly Account 447 and/or Account 555 net amounts are aggregated and separately reported in Account 447 and 555, respectively.

76. Some commenters also recommend that the Commission allow companies flexibility in determining net sales and/or purchases during the relevant reporting period and for using the appropriate account or accounts to display its net sales and/or purchases.[67] One of these commenters suggests that some companies may choose to net their purchases and sales for the entire reporting period, while others may reflect separately net purchases when the company was a net buyer and net sales when it was a net seller.

77. On the other hand, one commenter suggests that the Commission define a uniform method for the calculation of the gross amount of sales versus purchases, whether it be

[57] NOPR at P 73–74.

[58] TAPS at 6–8, International Transmission at 7.

[59] TAPS at 6–8.

[60] NOPR at P 75–79.

[61] *See* APPA at 2, NRECA at 4.

[62] NRECA at 5.

[63] APPA at 2.

[64] *See* First Energy at 15, MGE at 2, Wisconsin Electric at 3, EEI at 6, APS at 3, Cinergy at 4, NYTOs at 12, SCE at 1.

[65] *See* MGE at 3.

[66] EEI at 6, First Energy at 16, Wisconsin Electric at 4.

[67] EEI at 7, First Energy at 16.

by the hour, day, week or month.[68] This commenter argues that, without such a standard, a wide range of interpretation and reporting is likely to result.

78. Another commenter asserts that netting should be allowed for transactions in all RTO markets.[69] This commenter suggests that the Commission clarify that netting of purchases from and sales into an RTO market is appropriate and allowed not only for transactions in an RTO that requires participants to offer all resources to and buy all power from the RTO, but for transactions in any RTO that offers an energy market in which participants may choose to offer all generation to and buy all power from the energy market. This commenter also suggests that the Commission clarify that purchases from and sales to one or more RTO markets may be netted against one another.

79. Finally, one commenter recommends that the Commission's Electronic Quarterly Reports (EQR) and annual reports be revised to match the accounting methodology using the Commission's USofA with the required reporting format.[70] While another commenter notes that there is a disconnect between the reporting of transactional data in the EQRs and reporting of the data in the FERC Form 1, stemming from how the data are defined in those two contexts. This commenter recommends that when the Commission next entertains revisions to one or the other of the forms, the Commission should discuss this issue with reporting entities to determine if some clarification aimed at conformity would be appropriate.[71]

iii. Commission Conclusion

80. Recording RTO energy market transactions on a net basis is appropriate as purchase and sale transactions taking place in the same reporting period to serve native load are done in contemplation of each other and should be combined. Netting accurately reflects what participants would be recording on their books and records in the absence of the use of an RTO market to serve their native load. Recording these transactions on a gross basis, in contrast, would give an inaccurate picture of a participant's size and revenue producing potential. The Commission will, therefore, adopt the proposed accounting for RTO energy market transactions with certain modifications and clarifications as discussed below. The Commission does expect public utilities, however, to maintain detailed records for auditing purposes of the gross sale and purchase transactions that support the net energy market amounts recorded on their books.

81. Additionally, we clarify that transactions are to be netted based on the RTO market reporting period in which the transaction takes place. For example, if the RTO market in which the transaction takes place uses an hourly period for determining energy market charges and credits, then non-RTO public utilities purchasing and selling energy in the market must net transactions on an hourly basis. Requiring participants to net transactions over the RTO market's reporting period leads to consistent and comparable energy market information for decision making purposes by the Commission and others.

82. Further, we clarify that the netting of purchases and sales in an RTO energy market is appropriate not only for transactions where participants are required to bid their generation into the market and buy generation from the market to supply their native load, but also in cases where an RTO offers an energy market in which participants may choose to offer all generation to and buy all power from the energy market.

83. We also clarify that if a participant is a net seller, rather than a net buyer, during a given market reporting period it must credit such net sales to Account 447, Sales for Resale, instead of Account 555, Purchased Power.

84. Finally, one purpose of this rule is to establish uniform accounting requirements for the purchase and sale of energy in RTO markets. The purpose of reporting of gross information in EQRs, in contrast, is to provide the Commission and the public with a more complete picture of wholesale market activities which affect jurisdictional services and rates, thereby helping to monitor for any market power and to ensure that customers are protected from improper conduct. These are not necessarily the same criteria and principles that should be used in establishing uniform accounting requirements. In any event, the reporting of wholesale market activity in EQRs falls outside the scope of this rule.

7. Ministerial Filings

85. Some commenters argue that certain revisions to the USofA will adversely affect the Attachment O formula rate which is used by the vast majority of the transmission owners in the Midwest ISO and other formula rates that rely on the USofA and Form 1 data for the rate inputs.[72] Specifically, for the Midwest ISO, new accounts or renumbered accounts may cause disruptions in the operation of the Attachment O formula rate, especially if there is no parallel revision to Attachment O to reflect these changes. Some commenters therefore request that the Commission clarify that it will accept ''ministerial'' filings in order to conform these formula rates to the final revisions of the USofA.[73]

86. In particular, FirstEnergy, among others, has expressed concern that the Commission ensure that the revisions to its accounting and financial reporting requirements will not provide an opportunity for challenges to Commission-approved formula rates nor shall the Commission entertain such challenges to these previously-accepted rates.[74] Therefore, the Commission should state that it will accept ''ministerial'' filings necessary to conform to the Final Rule all Commission accepted formula rates that rely on Form 1 inputs. FirstEnergy further argues that the Commission should provide a specific timeline to allow such filings but coordinate the respective effective dates of the rate filings and reporting changes to ensure that there is no gap in cost recovery.[75] International Transmission requests that the Final Rule establish a compliance filing process, rather than allow a Federal Power Act section 205 filing,[76] so that there will be no challenges to ministerial filings in order for public utilities to revise the formula rate templates.[77]

Commission Conclusion

87. We will allow revisions to tariffs to conform to the changes adopted here, but pursuant to section 205. We will, however, consider only comments that address the specific revisions necessary to comply with these accounting and reporting revisions. By narrowly focusing the scope of the filings and of the comments to only those changes necessary to conform to this Final Rule, public utilities can be assured that commenters cannot otherwise and inappropriately challenge the reasonableness of their Commission-approved and accepted formula rates.

88. We also find that any necessary revisions to formula rates in order to

[68] NRECA at 3.

[69] MGE at 3.

[70] Wisconsin Electric at 4.

[71] EEI at 7.

[72] *See* FirstEnergy at 13, International Transmission at 4, EEI at 10.

[73] *See* FirstEnergy at 1–2, 13–15, International Transmission at 3–4.

[74] International Transmission at 3–4, FirstEnergy at 14.

[75] FirstEnergy at 14.

[76] 16 U.S.C. 824d (2000).

[77] International Transmission at 4.

conform to the Final Rule should not increase rates. The requisite changes to Attachment O, for example, would be the result of the new accounts and would solely reflect accounting changes adopted in this Final Rule. Such changes also should not involve substantive changes to the way the formula rates operate or the way the charges are calculated.

8. Cost Oversight

89. The Commission received multiple comments regarding cost oversight in response to the accounting and financial reporting NOPR. Commenters assert that the restructuring of the electric industry will only benefit consumers if transmission organizations are subject to greater efficiency and accountability.[78] As the National Rural Electric Cooperative Association (NRECA) states, ''[t]he absence of common standards and rules currently hampers meaningful examination of the cost-effectiveness of the products and services that RTOs/ISOs offer.'' [79]

90. Commenters have also included general suggestions to the Commission, which they argue, would not only enhance and facilitate transparency and comparability of RTO finances, but could also be an integral first step towards controlling RTO operational costs. Among other things, commenters have suggested that the Commission require RTOs to include a detailed analysis of their business risks and opportunities as part of their periodic financial reporting.[80]

91. A few commenters also urge the Commission to continue its efforts in reviewing the cost oversight and accountability in the budgeting and expenditure process that RTOs utilize.[81] Revision of the USofA represents only a partial solution in providing adequate transparency and accountability in RTO financial reporting.

92. Commenters have expressed concern that the Commission's proposed revisions fall short in meeting the goal of ensuring that the costs of the RTOs are legitimate and reasonable.[82] Cinergy has therefore, for example, proposed that RTOs annually file with the Commission a formula cost assignment template which supports the projected RTO costs by billing schedule for a twelve month period. This report, Cinergy explains, would include detailed projected direct costs and a proposed assignment/allocation of overhead costs to the specific schedule. This would provide parties with an opportunity to comment and prior Commission approval would be required before the RTO could proceed with the expenditure.

93. Midwest ISO Transmission Owners argue that the proposed revisions to the USofA lack before-the-fact review of costs. They contend that while after-the-fact review of costs is being done if an RTO has a formula rate, it does not adequately respond to the needs of these not-for-profit entities, as an entity's ''not-for-profit status complicates a prudence review after the costs are incurred.'' [83] Midwest ISO Transmission Owners therefore suggest that, in order to keep the Commission and RTO members, as well as interested state commission, abreast of estimated and actual expenditures and to provide RTO members due process, the Commission should require approval before the RTO incurs significant costs and also require regular reporting after costs have been incurred.

Commission Conclusion

94. We recognize that there are divergent views as to the best way to accomplish the goals of this initiative. The accounting and form changes adopted herein add visibility and uniformity to the accounting and financial reporting for the costs of transmission and market operation plant, and the expenses incurred and revenue received in providing transmission and market services. The changes provide comparability among RTOs and non-RTO public utilities that perform region-wide transmission and market operations, and minimize inconsistent reporting by RTOs and non-RTO public utilities. Further, these revisions allow the Commission to better understand transactions and events that affect RTOs and their members and non-RTO public utilities.

95. The Commission expects the changes in financial reporting to lead to improvements in cost recovery practices by providing more details concerning the costs of certain functions and increased assurance that the costs are legitimate and reasonable costs of providing service and assigned to the correct period for recovery in rates. We believe the changes we are adopting herein are an important first step. The concerns raised with regard to RTO cost oversight, including the budgeting process, the expenditure process, and the analysis of RTO business risks and opportunities are beyond the scope of this proceeding. However, cost oversight practices are an important aspect of the initiative we began with the NOI and we intend to address those matters in the near future.

9. Other Matters

96. The Commission noted in the NOPR that the derivative and asset retirement accounts established under Order Nos. 627 and 631 were not included in the Chart of Account listings contained in the USofA.[84] The Commission here takes this opportunity to update the account listing to include the accounts established under these orders.

IV. Effective Date

i. Accounting NOPR

97. In the NOPR, the Commission proposed that the aforementioned accounting and financial reporting changes and updates would become effective on January 1, 2006.[85]

ii. Commenters

98. Most of the commenters suggest the Commission instead adopt a January 1, 2007 effective date. Some of the commenters believe non-RTO public utilities face a substantial burden of implementation because of other obligations and functions performed by these companies.[86] One commenter explains that it has Sarbanes-Oxley Act concerns about any proposal that would require changes, reconfigurations or modifications to its general ledger computer systems and reporting structures, and/or the methodology of the reporting of RTO-related revenue and cost transactions. This commenter requests that the Commission provide sufficient time to implement, internally test and have any necessarily validations by external auditors of such changes or modifications.[87] Another commenter expresses similar concerns and requests that the Commission provide a minimum of three months to adjust their accounting and reporting systems. This commenter explains that the easiest time for companies to implement changes in the start of a fiscal year, typically the calendar year.[88] Other commenters indicate that more time is needed to allow for more coordination, discussion and consideration of the complexities of all

[78] *See, e.g.*, ELCON at 1, IESO at 2.

[79] *See* NRECA at 2.

[80] Indicated NYTOs at 2, 5–6.

[81] *See, e.g.*, NEPOOL Participants Committee at 1–5.

[82] *See, e.g.*, Cinergy and Midwest ISO Transmission Owners.

[83] Midwest ISO Transmission Owners at 5, *citing Midwest Independent Transmission System Operators, Inc.*, 101 FERC ¶ 61,221 (2002).

[84] NOPR at P 80.

[85] *Id.* at P 82.

[86] *See* EEI at 11–12, SoCal ED at 4, First Energy at 11–13.

[87] First Energy at 11–13.

[88] EEI at 11.

the issues.[89] Another commenter submits that the rule take effect on the proposed date unless it places an undue burden on the industry as a whole or on some public utilities; in which case, the commenter recommends that RTOs submit pro forma financial statements conforming to the new rules on the proposed date.[90]

99. Commenters generally were in agreement that the Commission should not require comparative analyses of the new data for earlier reporting periods. Commenters contend that it would be unduly burdensome for FERC Form 1 and 3–Q filers to go back in time to try to capture retroactive prior period information for the new sub-accounts.[91]

iii. Commission Conclusion

100. The accounting and form changes adopted herein add visibility and uniformity to the accounting and financial reporting for the costs of transmission and market operation plant, and the expenses incurred and revenue received in providing transmission and market services. The changes provide comparability among RTOs and non-RTO public utilities that perform region wide transmission and market operations, and minimize inconsistent reporting by RTOs and non-RTO public utilities. Further, these revisions allow the Commission to better understand transactions and events that affect RTOs and their members and non-RTO public utilities.

101. The Commission also expects the changes in financial reporting to lead to improvements in cost recovery practices by providing more details concerning the costs of certain functions and increased assurance that the costs are legitimate and reasonable costs of providing service and assigned to the correct period for recovery in rates.

102. For the above reasons, the Commission orders that the aforementioned accounting and financial reporting changes and updates become effective on January 1, 2006. The Commission believes it is imperative to obtain as quickly as possible adequate transparency of transactions and business functions among and between RTOs and their member public utilities as well as non-RTO public utilities to allow for prudent choices to be made on issues such as optimizing the efficiency of business functions. Hence, the Commission adopts a January 1, 2006 effective date as originally proposed in the NOPR.

103. The Commission clarifies that it has no intention of requiring public utilities to report prior period information in the newly-created accounts for FERC Form 1 and 3–Q purposes. Public utilities should report prior period information in the accounts originally used, except for Account 561, Load Dispatching. Since Account 561 is being replaced by newly-created sub-accounts, public utilities should report amounts reported in Account 561 for 2005 in Account 561.2 [92] for the 2006 Form 1 filed in April 2007 and for the Form 3–Qs filed in 2006. This approach will alleviate any burden associated with reporting prior period information.

V. Changes to the FERC Quarterly and Annual Report Forms

104. The changes adopted herein will require revising the existing schedules in the FERC Forms 1, 1–F and 3–Q filed with the Commission. Appendix B contains samples of the updated or new schedules that will be included in these reports and will be available on e-Library.[93]

VI. Information Collection Statement

105. The following collections of information referenced in this Final Rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[94] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[95] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number or the Commission had provided a justification as why the control number should be displayed.

106. The following burden estimates are for complying with this final rule as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total
1 Form 1 (RTOs)	6	1	35	210
2 Form 1 (Non-RTOs)	214	1	11	2,354
3 Form 1–F	33	1	11	363
4 Form 3–Q (RTOs)	6	3	30	540
5 Form 3–Q (Non-RTOs)	247	3	15	11,115
Totals				14,582

Information Collection Costs: The Commission has projected the average annualized cost of all respondents to be the following: 14,582 hrs. + (2 hrs recordkeeping × 253 respondents) = 15,088 hrs. @ $60 per hour = $905,280 for respondents. No capital startup costs are estimated to be incurred by respondents.

Annualized Costs (Operations & Maintenance): The costs for performing the prepared schedules are rolled into the total costs for completing the Commission's annual and quarterly financial reports.

Title: FERC Form 1, ''Annual report of Major electric utilities, licensees, and others''

FERC Form 1–F, ''Annual report for Nonmajor public utilities and licensees''

FERC Form 3–Q, ''Quarterly financial report of electric utilities, licensees, and natural gas companies''.

Action: Information collections.

OMB Control Nos.: 1902–0021; 1902–0029; and 1902–0205.

Respondents: Businesses or other for profit.

Frequency of responses: Annually and quarterly.

Necessity of the Information: This Final Rule revises the Commission's regulations to reflect changes that are occurring in the electric industry due to the availability of open-access transmission service and increasing

[89] *See* National Grid at 13–14, Indicated NYTOs at 11–12.

[90] *See* APPA at 7–8.

[91] *See* EEI at 12.

[92] This is for reporting purposes only and no amounts should be reclassified for accounting purposes.

[93] Appendix B will not be published in the **Federal Register**.

[94] *See* 44 U.S.C. 3507(d) (2000).

[95] 5 CFR 1320.11.

competition in the wholesale bulk power industry. The addition of these new accounts is intended to standardize accounting for transactions and events affecting public utilities and licensees, including independent system operators and regional transmission organizations that file financial reports with the Commission. The accounting regulations currently found in the USofA and related financial reporting requirements capture financial information along traditional primary business functions but do not provide sufficient detailed information concerning RTOs and, in particular, the costs incurred by these organizations as well as non-RTO public utilities that engage in similar activities. The addition of these accounts, and related changes in reporting, are intended to improve the transparency, completeness and consistency of accounting practices for the cost of assets, the expenses incurred in providing services, along with revenues collected. Without specific instructions and accounts for recording and reporting the above transactions and events, inconsistent and incomplete accounting and reporting will result.

Internal Review: The Commission has reviewed the requirements pertaining to the USofA and to the financial reports it prescribes and determined that the proposed revisions are necessary because the Commission needs to establish uniform accounting and reporting requirements for the costs of utility assets and the expenses incurred for providing services as part of utility operations.

107. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

108. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*).

109. For submitting comments concerning the collection of information(s) and the associated burden estimates, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission; Phone: (202) 395–4650, fax: (202) 395–7285.

VII. Environmental Analysis

110. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[96] No environmental consideration is necessary for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[97] and also that addresses accounting.[98] This Final Rule addresses accounting. In addition, this Final Rule involves information gathering, analysis, and dissemination. Therefore, the Final Rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

VIII. Regulatory Flexibility Act

111. The Regulatory Flexibility Act of 1980 (RFA) [99] generally requires a description and analysis of the effect that the final rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.

112. The Commission concludes that this rule would not have such an impact on a substantial number of small entities. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity; [100] this rule applies principally to public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce and not electric utilities per se. The Commission also concludes that this rule will not impose a significant burden on industry since the information is already being captured by their accounting systems and generally being reported at a consolidated business level.

IX. Document Availabilty

113. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

114. From the Commission's Home Page on the Internet, this information is available in the Commission's management system, e-Library. The full text of this document is available on e-Library in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in e-Library, type the docket number excluding the last three digits of this document in the docket number field.

115. User assistance is available for e-Library and the Commission's website during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371, Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*

Effective Date and Congressional Notification

This Final Rule will take effect January 1, 2006. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

List of Subjects in 18 CFR Part 101

Electric power, electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends Part 101, Chapter I, Title 18, Code of Federal Regulations, as follows.

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[96] *See* Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[97] *See* 18 CFR 380.4(a)(5).

[98] *See* 18 CFR 380.4(c)(16).

[99] *See* 5 U.S.C. 601–612 (2000).

[100] *See* 5 U.S.C. 601(3) citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal years did not exceed 4 million MWh. 13 CFR 121.201.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 2. In part 101, Definitions, redesignate definitions 30–39 as definitions 31–40 and add new definition 30. *Regional market* to the list to read as follows:

* * * * *

30. *Regional market* means an organized energy market operated by a public utility, whether directly or through a contractual relationship with another entity.

■ 3. In part 101, Balance Sheet Chart of Accounts, Accounts 175, 176, 219, 230, 244, and 245 are added to the list:

Balance Sheet Chart of Accounts

ASSETS AND OTHER DEBITS

* * * * *

3. CURRENT AND ACCRUED ASSETS

* * * * *

175 Derivative instrument assets.
176 Derivative instrument assets-Hedges.

* * * * *

LIABILITIES AND OTHER CREDITS

5. PROPRIETARY CAPITAL

* * * * *

219 Accumulated other comprehensive income.

* * * * *

7. OTHER NONCURRENT LIABILITIES

* * * * *

230 Asset retirement obligations.

8. CURRENT AND ACCRUED LIABILITIES

* * * * *

244 Derivatives instrument liabilities.
245 Derivative instrument liabilities-Hedges.

* * * * *

■ 4. In part 101, Balance Sheet Accounts, Account 108, paragraph C is revised to read as follows:

* * * * *

108 Accumulated provision for depreciation of electric utility plant (Major only).

* * * * *

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant:

(1) Steam production,
(2) Nuclear production,
(3) Hydraulic production,
(4) Other production,
(5) Transmission,
(6) Distribution,
(7) Regional Transmission and Market Operation, and
(8) General.

These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification:

(a) The amount of accrual for depreciation,
(b) The book cost of property retired,
(c) Cost of removal,
(d) Salvage, and
(e) Other items, including recoveries from insurance.

Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of plant recorded in Account 108, Accumulated provision for depreciation of electric utility plant (Major only).

* * * * *

■ 5. In part 101, Electric Plant Chart of Accounts, Accounts 317, 326, 337, 347, 359.1, and 374 are added to the list:

Electric Plant Chart of Accounts

* * * * *

2. PRODUCTION PLANT

A. STEAM PRODUCTION

* * * * *

317 Asset retirement costs for steam production plant.

B. NUCLEAR PRODUCTION

* * * * *

326 Asset retirement costs for nuclear production plant (Major only).

* * * * *

C. HYDRAULIC PRODUCTION

* * * * *

337 Asset retirement costs for hydraulic production plant.

D. OTHER PRODUCTION

* * * * *

347 Asset retirement costs for other production plant.

3. TRANSMISSION PLANT

* * * * *

359.1 Asset retirement costs for transmission plant.

4. DISTRIBUTION PLANT

* * * * *

374 Asset retirement costs for distribution plant.

■ 6. In part 101, Electric Plant Chart of Accounts, 5. General Plants, is redesignated as 6. General Plants and a new section 5 with primary plant account listing is added as follows:

5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT

380 Land and land rights.
381 Structures and improvements.
382 Computer hardware.
383 Computer software.
384 Communication Equipment.
385 Miscellaneous Regional Transmission and Market Operation Plant.
386 Asset Retirement Costs for Regional Transmission and Market Operation Plant.
387 [Reserved]

■ 7. In part 101, Electric Plant Accounts, new primary plant accounts 380, 381, 382, 383, 384, 385, and 386 are added to read as follows:

Electric Plant Accounts

5. Regional Transmission and Market Operation Plant

* * * * *

380 Land and Land Rights

This account shall include the cost of land and land rights used in connection with regional transmission and market operations.

381 Structures and Improvements

This account shall include the cost in place of structures and improvements used for regional transmission and market operations.

382 Computer Hardware

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching, system planning, standards development, market monitoring, and market administration activities. Records shall be maintained identifying to the maximum extent practicable computer hardware owned and used for: (1) Scheduling, system control and dispatching, (2) system planning and standards development, and (3) market monitoring and market administration activities.

Items

1. Personal computers
2. Servers
3. Workstations
4. Energy Management System (EMS) hardware
5. Supervisory Control and Data Acquisition (SCADA) system hardware
6. Peripheral equipment
7. Networking components

383 Computer Software

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching, system planning, standards

development, market monitoring, and market administration activities. Records shall be maintained identifying to the maximum extent practicable the cost of software used for:

(1) Scheduling, system control and dispatching,

(2) System planning and standards development, and

(3) Market monitoring and market administration activities.

Items

1. Software licenses
2. User interface software
3. Modeling software
4. Database software
5. Tracking and monitoring software
6. Energy Management System (EMS) software
7. Supervisory Control and Data Acquisition (SCADA) system software
8. Evaluation and assessment system software
9. Operating, planning and transaction scheduling software
10. Reliability applications
11. Market application software

384 Communication Equipment

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable
2. Remote terminal units
3. Microwave towers
4. Global Positioning System (GPS) equipment
5. Servers
6. Workstations
7. Telephones

385 Miscellaneous Regional Transmission and Market Operation Plant

This account shall include the cost of regional transmission and market operation plant and equipment not provided for elsewhere,

386 Asset Retirement Costs for Regional Transmission and Market Operation Plant

This account shall include asset retirement costs on regional control and market operation plant and equipment.

■ 8. In part 101, Electric Plant Chart of Accounts, under newly redesignated 6. General Plant, a new Account 399.1 is added to the list.

399.1 Asset retirement costs for general plant.

■ 9. In part 101, Operating Revenue Chart of Accounts, new Accounts 456.1, 457.1 and 457.2 are added to the other operating revenue listing as follows:

Operating Revenue Chart of Accounts

* * * * *

2. OTHER OPERATING REVENUES

456.1 Revenues from transmission of electricity of others.

457.1 Regional transmission service revenues.

457.2 Miscellaneous revenues.

■ 10. In part 101, Income Accounts, Account 456, Item 5 is removed, and Item 6 is redesignated as Item 5.

■ 11. In part 101, Income Accounts, new revenue accounts 456.1, 457.1, and 457.2 are added to read as follows:

Operating Revenue Accounts

* * * * *

456.1 Revenues From Transmission of Electricity of Others

This account shall include revenues from transmission of electricity of others over transmission facilities of the utility.

457.1 Regional Transmission Service Revenues

This account shall include revenues derived from providing scheduling, system control and dispatching services. Include also in this account reimbursements for system planning, standards development, and market monitoring and market compliance activities. Records shall be maintained so as to show: (1) The services supplied and revenues received from each customer and (2) the amounts billed by tariff or specified rates.

457.2 Miscellaneous Revenues

This account shall include revenues and reimbursements for costs incurred by regional transmission service providers not provided for elsewhere. Records shall be maintained so as to show: (1) The services supplied and revenues received from each customer, and (2) the amounts billed by tariff or specified rates.

■ 12. In part 101, Operation and Maintenance Expense Chart of Accounts, 3. Distribution Expenses is redesignated as 4. Distribution Expenses; 4. Customer Accounts Expenses is redesignated as 5. Customer Accounts Expenses; 5. Customer Service and Informational Expenses is redesignated as 6. Customer Service and Informational Expenses; 6. Sales Expense is redesignated as 7. Sales Expenses; and 7. Administrative and General Expenses is redesignated as 8. Administrative and General Expenses.

■ 13. In part 101, Operation and Maintenance Expense Chart of Accounts, a new Regional Market Expenses function is added and new Accounts 575.1 575.2, 575.3, 575.4, 575.5, 575.6, 575.7, 575.8, 576.1, 576.2, 576.3, 576.4 and 576.5 are added as follows:

Operation and Maintenance Expense Chart of Accounts

* * * * *

3. REGIONAL MARKET EXPENSES

Operation

575.1 Operation Supervision.

575.2 Day-ahead and real-time market facilitation.

575.3 Transmission rights market facilitation.

575.4 Capacity market facilitation.

575.5 Ancillary services market facilitation.

575.6 Market monitoring and compliance.

575.7 Market facilitation, monitoring and compliance services.

575.8 Rents.

Maintenance

576.1 Maintenance of structures and improvements.

576.2 Maintenance of computer hardware.

576.3 Maintenance of computer software.

576.4 Maintenance of communication equipment.

576.5 Maintenance of miscellaneous market operation plant.

■ 14. In part 101, Operation and Maintenance Expense Chart of Accounts, the listing of transmission expenses is revised as follows:

Operation and Maintenance Expense Chart of Accounts

* * * * *

2. TRANSMISSION EXPENSES

Operation

560 Operation supervision and engineering.

561.1 Load dispatch—Reliability.

561.2 Load dispatch—Monitor and operate transmission system.

561.3 Load dispatch—Transmission service and scheduling.

561.4 Scheduling, system control and dispatch services.

561.5 Reliability planning and standards development.

561.6 Transmission service studies.

561.7 Generation interconnection studies.

561.8 Reliability planning and standards development services.

562 Station expenses (Major only).

563 Overhead line expenses (Major only).

564 Underground line expenses (Major only).

565 Transmission of electricity by others (Major only).

566 Miscellaneous transmission expenses (Major only).

567 Rents.

567.1 Operation supplies and expenses (Nonmajor only).

Maintenance

568 Maintenance supervision and engineering (Major only).

569 Maintenance of structures (Major only).
569.1 Maintenance of computer hardware.
569.2 Maintenance of computer software.
569.3 Maintenance of communication equipment.
569.4 Maintenance of miscellaneous regional transmission plant.
570 Maintenance of station equipment (Major only).
571 Maintenance of overhead lines (Major only).
572 Maintenance of underground lines (Major only).
573 Maintenance of miscellaneous transmission plant (Major only).
574 Maintenance of transmission plant (Nonmajor only).

■ 15. In part 101, Operation and Maintenance Expense Accounts, the first paragraph of Account 556 instruction is revised to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

556 System Control and Load Dispatching (Major Only)

This account shall include the cost of labor and expenses incurred in load dispatching activities for system control. Utilities having an interconnected electric system or operating under a central authority which controls the production and dispatching of electricity may apportion these costs to this account and transmission expense Accounts 561.1 through 561.4, and Account 581, Load Dispatching-Distribution.

■ 16. In part 101, Operation and Maintenance Expense Accounts, Account 561, Load Dispatching (Major only) is removed.

■ 17. In part 101, Operation and Maintenance Expense Accounts, new expense accounts 561.1, 561.2, 561.3, 561.4, 561.5, 561.6, 561.7, 561.8, 569.1, 569.2, 569.3, 575.1, 575.2, 575.3, 575.4, 575.5, 575.6, 575.7, 575.8, 576.1, 576.2, 576.3, 576.4 and 576.5 are added to read as follows:

Operation and Maintenance Expense Accounts

* * * * *

561.1 Load Dispatch—Reliability

This account shall include the cost of labor, materials used and expenses incurred by a regional transmission service provider or other transmission provider to manage the reliability coordination function as specified by the North American Electric Reliability Council (NERC) and individual reliability organizations. These activities shall include performing current and next day reliability analysis. This account shall include the costs incurred to calculate load forecasts, and performing contingency analysis.

561.2 Load Dispatch—Monitor and Operate Transmission System

This account shall include the costs of labor, materials used and expenses incurred by a regional transmission service provider or other transmission provider to monitor, assess and operate the power system and individual transmission facilities in real-time to maintain safe and reliable operation of the transmission system. This account shall also include the expense incurred to manage transmission facilities to maintain system reliability and to monitor the real-time flows and direct actions according to regional plans and tariffs as necessary.

Items

1. Receive and analyze outage requests
2. Reschedule outage plans
3. Monitor solution quality field data values, providing model updates to NERC and coordinating network model changes across all systems
4. Conduct operating training related to NERC certification
5. Monitor generation resources and communicate expected dispatch actions
6. Ensure ancillary service requirements are met
7. Directing switching
8. Controlling system voltages
9. Obtaining reports on the weather and special events
10. Preparing operating reports and data for billing and budget purposes

561.3 Load Dispatch—Transmission Service and Scheduling

This account shall include the costs of labor, materials used and expenses incurred by a regional transmission service provider or other transmission provider to process hourly, daily, weekly and monthly transmission service requests using an automated system such as an Open Access Same-Time Information System (OASIS). It shall also include the expenses incurred to operate the automated transmission service request system and to monitor the status of all scheduled energy transactions.

561.4 Scheduling, System Control and Dispatching Services

This account shall include the costs billed to the transmission owner, load serving entity or generator for scheduling, system control and dispatching service. Include in this account service billings for system control to maintain the reliability of the transmission area in accordance with reliability standards, maintaining defined voltage profiles, and monitoring operations of the transmission facilities.

561.5 Reliability, Planning and Standards Development

This account shall include the cost of labor, materials used and expenses incurred for the system planning of the interconnected bulk electric transmission systems within a planning authority area.

Items

1. Developing and maintaining transmission system models to evaluate transmission system performance.
2. Maintaining and applying methodologies and tools for the analysis and simulation of the transmission systems for the assessment and development of transmission expansion plans.
3. Assessing, developing and documenting transmission expansion plans.
4. Maintaining transmission system models (steady-state, dynamics, and short circuit).
5. Collecting transmission information and transmission facility characteristics and ratings.
6. Notifying participants of any planned transmission changes that may impact their facilities.
7. Developing and reporting on transmission expansion plans for assessment and compliance with reliability standards.
8. Developing reliability standards for the planning and operation of the interconnected bulk electric transmission systems that serve the United States, Canada, and Mexico.
9. Developing criteria and certification procedures for reliability authorities, transmission operators and others.
10. Outside services employed.

Note: The cost of supervision, customer records and collection expenses, administrative and general salaries, office supplies and expenses, property insurance, injuries and damages, employee pension and benefits, regulatory commission expenses, general advertising, and rents shall be charged to the customer accounts, service, and administrative and general expense accounts contained in the Uniform System of Accounts.

561.6 Transmission Service Studies

This account shall include the cost of labor, materials used and expenses incurred to conduct transmission services studies for proposed interconnections with the transmission system. Detailed records shall be

maintained for each study undertaken and all reimbursements received for conducting such a study.

561.7 Generation Interconnection Studies

This account shall include the cost of labor, materials used and expenses incurred to conduct generation interconnection studies for proposed interconnections with the transmission system. Detailed records shall be maintained for each study undertaken and all reimbursements received for conducting such a study.

561.8 Reliability Planning and Standards Development Services

This account shall include the costs billed to the transmission owner, load serving entity, or generator for system planning of the interconnected bulk electric transmission system. Include also the costs billed by the regional transmission service provider for system reliability and resource planning to develop long-term strategies to meet customer demand and energy requirements. This account shall also include fees and expenses for outside services incurred by the regional transmission service provider and billed to the load serving entity, transmission owner or generator.

* * * * *

569.1 Maintenance of Computer Hardware

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the transmission function.

569.2 Maintenance of Computer Software

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the transmission function.

Items

1. Telephone support
2. Onsite support
3. Software updates and minor revisions

569.3 Maintenance of Communication Equipment

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the transmission function.

569.4 Maintenance of Miscellaneous Regional Transmission Plant

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of miscellaneous regional transmission plant serving the transmission function.

* * * * *

575.1 Operation Supervision

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the regional energy markets.

575.2 Day-Ahead and Real-Time Market Administration

This account shall include the cost of labor, materials used and expenses incurred to facilitate the Day-Ahead and Real-Time markets. This account shall also include the costs incurred to manage the real-time deployment of resources to meet generation needs and to provide capacity adequacy verification. Include in this account the costs incurred to maintain related sections of the tariff, market rules, operating procedures, and standards and coordinating with neighboring areas.

Items

1. Consultant fees and expenses
2. System record and report forms
3. Meals, traveling and incidental expenses

Note: The cost of supervision, customer records and collection expenses, administrative and general salaries, office supplies and expenses, property insurance, injuries and damages, employee pension and benefits, regulatory commission expenses, general advertising, and rents shall be charged to the customer accounts, service, and administrative and general expense accounts contained in the Uniform System of Accounts.

575.3 Transmission Rights Market Administration

This account shall include the cost of labor, materials used and expenses incurred to manage the allocation and auction of transmission rights.

575.4 Capacity Market Administration

This account shall include the cost of labor, materials used and expenses incurred to manage the allocation of capacity rights.

575.5 Ancillary Services Market Administration

This account shall include the cost of labor, materials used and expenses incurred to manage all other ancillary services market functions.

575.6 Market Monitoring and Compliance

This account shall include the cost of labor, materials used and expenses incurred to review market data and operational decisions for compliance with market rules. It shall also include the costs incurred to interface with external market monitors.

575.7 Market Administration, Monitoring and Compliance Services

This account shall include the costs billed to the transmission owner, load serving entity or generator for market administration, monitoring and compliance services.

575.8 Rents

This account shall include all rents of property of others used, occupied, or operated in connection with market administration and monitoring. (See operating expense instruction 3.)

576.1 Maintenance of Structures and Improvements

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of structures used in market administration and monitoring. (See operating expense instruction 2.)

576.2 Maintenance of Computer Hardware

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware used in market administration and monitoring.

576.3 Maintenance of Computer Software

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products used in market administration and monitoring.

Items

1. Telephone support
2. Onsite support
3. Software updates and minor revisions

576.4 Maintenance of Communication Equipment

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment used in market administration and monitoring.

576.5 Maintenance of Miscellaneous Market Operation Plant

This account shall include the cost of labor, materials used and expenses

incurred in the maintenance of miscellaneous market operation plant used in market administration and monitoring.

Note: The following appendices, A and B, will not appear in the Code of Federal Regulations.

Appendix A—List of Commenters

1 American Public Power Association (APPA)
2 Arizona Public Service Company (APS)
3 Cinergy Services, Inc. (Cinergy) [101]
4 City of Santa Clara, California/dba Silicon Valley Power (City of Santa Clara)
5 Electricity Consumers Resource Council (ELCON)
6 The Independent Electricity System Operator of Ontario (IESO)
7 Indicated New York Transmission Owners (Indicated NYTOs) [102]
8 International Transmission Company (International Transmission)
9 The Iowa Utilities Board (Iowa Board)
10 ISO/RTO Council [103]
11 FirstEnergy Service Company (FirstEnergy) [104]
12 Madison Gas & Electric Company (MGE)
13 Massachusetts Municipal Wholesale Electric Company (MMWEC)
14 Midwest ISO Transmission Owners [105]
15 National Rural Electric Cooperative Association (NRECA)
16 National Grid USA
17 The New England Power Pool Participants Committee (NEPOOL Participants Committee)
18 NiSource Inc. (NiSource)
19 Southern California Edison Company (SCE)
20 The Transmission Agency of Northern California (TANC)
21 Transmission Access Policy Study Group (TAPS)
22 Wisconsin Electric Power Company (Wisconsin Electric)

[101] Cinergy Services filed comments on behalf of its franchised utility affiliates, The Cincinnati Gas & Electric Company, PSI Energy, Inc., and The Union Light, Heat and Power Company (collectively, Cinergy)

[102] Indicated NYTOs includes: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; LIPA; New York Power Authority; New York Electric & Gas Corporation; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

[103] ISO/RTO Council includes: The Alberta Electric System Operator; California Independent System Operators, Inc.; Electric Reliability Council of Texas; the Independent Electricity System of Ontario, Inc.; ISO New England, Inc.; Midwest Independent Transmission System Operators, Inc; New York Independent System Operators, Inc.; PJM Interconnection, L.L.C.; and Southwest Power Pool.

[104] FirstEnergy filed on behalf of its electric utility operating company affiliates: Ohio Edison Company; The Toledo Edison Company; the Cleveland Electric Illuminating Company; Pennsylvania Power Company; American Transmission System, Inc; Jersey Central Power & Light Company; Pennsylvania Electric Company; and Metropolitan Edison Company.

[105] The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCilco, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; Aquila, Inc. d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); City Water, Light & Power (Springfield, IL); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; LG&E Energy LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

BILLING CODE 6717–01–P

APPENDIX B

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d)

Line No.	Accounts (a)	Balance Beginning of Year (b)	Additions (c)
1	**1. INTANGIBLE PLANT**		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2, 3, and 4)		
6	**2. PRODUCTION PLANT**		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Turbogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of lines 8 thru 15)		
17	**B. Nuclear Production Plant**		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbogenerator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of lines 18 thru 24)		
26	**C. Hydraulic Production Plant**		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Miscellaneous Power Plant Equipment		
33	(336) Roads, Railroads, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of lines 27 thru 34)		
36	**D. Other Production Plant**		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Production Plant (Enter Total of lines 37 thru 44)		
46	TOTAL Production Plant (Enter Total of lines 16, 25, 35, and 45)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

Distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No.
				1
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Line No.	Accounts (a)	Balance Beginning of Year (b)	Additions (c)
47	**3. TRANSMISSION PLANT**		
48	(350) Land and Land Rights		
49	(352) Structures and Improvements		
50	(353) Station Equipment		
51	(354) Towers and Fixtures		
52	(355) Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground Conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of lines 48 thru 60)		
59	**4. DISTRIBUTION PLANT**		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
63	(363) Storage Battery Equipment		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	TOTAL Distribution Plant (Enter Total of lines 63 thru 77)		
76	**5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT**		
77	(380) Land and Land Rights		
78	(381) Structures and Improvements		
79	(382) Computer Hardware		
80	(383) Computer Software		
81	(384) Communication Equipment		
82	(385) Miscellaneous Regional Transmission and Market Operation Plant		
83	(386) Asset Retirement Costs for Regional Transmission and Market Operation Plant		
84	TOTAL Transmission and Market Operation Plant (Enter Total of lines 80 thru 86)		
85	**6. GENERAL PLANT**		
86	(389) Land and Land Rights		
87	(390) Structures and Improvements		
88	(391) Office Furniture and Equipment		
89	(392) Transportation Equipment		
90	(393) Stores Equipment		
91	(394) Tools, Shop and Garage Equipment		
92	(395) Laboratory Equipment		
93	(396) Power Operated Equipment		
94	(397) Communication Equipment		
95	TOTAL (Accounts 101 and 106)		
96	(102) Electric Plant Purchased (See Instruction 8)		
97	(Less) (102) Electric Plant Sold (See Instruction 8)		
98	(103) Experimental Plant Unclassified		
99	TOTAL Electric Plant in Service (Enter Total of lines 98 thru 101)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No.
				47
				48
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

MATERIALS AND SUPPLIES

1. For Account 154, report the amount of plant materials and operating supplies under the primary functional classifications as indicated in column (a); estimates of amounts by function are acceptable. In column (d), designate the department or departments which use the class of material.
2. Give an explanation of important inventory adjustments during the year (in a footnote) showing general classes of material and supplies and the various accounts (operating expenses, clearing accounts, plant, etc.) affected debited or credited. Show separately debit or credits to stores expense clearing, if applicable.

Line No.	Account (a)	Balance Beginning of Year (b)	Balance End of Year (c)	Department or Departments which Use Material (d)
1	Fuel Stock (Account 151)			
2	Fuel Stock Expenses Undistributed (Account 152)			
3	Residuals and Extracted Products (Account 153)			
4	Plant Materials and Operating Supplies (Account 154)			
5	Assigned to - Construction (Estimated)			
6	Assigned to - Operations and Maintenance			
7	Production Plant (Estimated)			
8	Transmission Plant (Estimated)			
9	Distribution Plant (Estimated)			
10	Regional Transmission and Market Operation Plant (Estimated)			
11	Assigned to - Other (provide details in footnote)			
12	TOTAL Account 154 (Enter Total of lines 5 thru 11)			
13	Merchandise (Account 155)			
14	Other Materials and Supplies (Account 156)			
15	Nuclear Materials Held for Sale (Account 157) (Not applicable to Gas Utility)			
16	Stores Expense Undistributed (Account 163)			
17				
18				
19				
20	TOTAL Materials and Supplies (Per Balance Sheet)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column (d), excluding retirements of non-depreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No.		Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant Leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to:				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expenses of Electric Plant Leased to Others				
6	Transportation Expenses-Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify, details in footnote):				
9					
10	TOTAL Depreciation Provision for Year (Enter Total of lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges for Plant Retirements (Enter Total of lines 12 thru 14)				
16	Other Debit or Cr. Items (Describe, details in Footnote):				
17					
18	Book Cost or Asset Retirement Costs Retired				
19	Balance End of Year (Enter Totals of lines 1, 10, 15, 16, and 18)				

Section B. Balances at End of Year According to Functional Classification

20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	Regional Transmission and Market Operation				
28	General				
29	TOTAL (Enter Total of lines 20 thru 28)				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

Transmission Service and Generation Interconnection Study Costs

1. Report the particulars (details) called for concerning the costs incurred and the reimbursements received for performing transmission service and generator interconnection studies.
2. List each study separately.
3. In column (a) provide the name of the study.
4. In column (b) report the cost incurred to perform the study at the end of period.
5. In column (c) report the account charged with the cost of the study.
6. In column (d) report the amounts received for reimbursement of the study costs at end of period.
7. In column (e) report the account credited with the reimbursement received for performing the study.

Line No.	Description (a)	Costs Incurred During Period (b)	Account Charged (c)	Reimbursements Received During the Period (d)	Account Credited With Reimbursement (e)
Transmission Studies					
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
Generation Studies					
11					
12					
13					
14					
15					
16					
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19					
20					

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATING REVENUES (Account 400)

1. The following instructions generally apply to the annual version of these pages. Do not report quarterly data in columns (c), (e), (f), and (g). Unbilled revenues and MWH related to unbilled revenues need not be reported separately as required in the annual version of these pages.
2. Report below operating revenues for each prescribed account, and manufactured gas revenues in total.
3. Report number of customers, columns (f) and (g), on the basis of meters, in addition to the number of flat rate accounts; except that where separate meter readings are added for billing purposes, one customer should be counted for each group of meters added. The -average number of customers means the average of twelve figures at the close of each month.
4. If increases or decreases from previous period (columns (c),(e), and (g)), are not derived from previously reported figures, explain any inconsistencies in a footnote.

Line No.	Title of Account (a)	Operating Revenues Year to Date Quarterly/Annual (b)	Operating Revenues Previous year (no Quarterly) (c)
1	**Sales of Electricity**		
2	(440) Residential Sales		
3	(442) Commercial and Industrial Sales		
4	Small (or Commercial) (See Instruction 4)		
5	Large (or Industrial) (See Instruction 4)		
6	(444) Public Street and Highway Lighting		
7	(445) Other Sales to Public Authorities		
8	(446) Sales to Railroads and Railways		
9	(448) Interdepartmental Sales		
10	TOTAL Sales to Ultimate Consumers		
11	(447) Sales for Resale		
12	TOTAL Sales of Electricity		
13	(Less) (449.1) Provision for Rate Refunds		
14	TOTAL Revenues Net of Provision for Refunds		
15	**Other Operating Revenues**		
16	(450) Forfeited Discounts		
17	(451) Miscellaneous Service Revenues		
18	(453) Sales of Water and Water Power		
19	(454) Rent from Electric Property		
20	(455) Interdepartmental Rents		
21	(456) Other Electric Revenues		
22	(456.1) Revenues from Transmission of Electricity of Others		
23	(457.1) Regional Control Service Revenues		
24	(457.2) Miscellaneous Revenues		
25			
26	TOTAL Other Operating Revenues		
27	TOTAL Electric Operating Revenues		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
1	**1. POWER PRODUCTION EXPENSES**		
2	**A. Steam Power Generation**		
3	**Operation**		
4	(500) Operation Supervision and Engineering		
5	(501) Fuel		
6	(502) Steam Expenses		
7	(503) Steam from Other Sources		
8	(Less) (504) Steam Transferred-Cr.		
9	(505) Electric Expenses		
10	(506) Miscellaneous Steam Power Expenses		
11	(507) Rents		
12	(509) Allowances		
13	TOTAL Operation (Enter Total of Lines 4 thru 12)		
14	**Maintenance**		
15	(510) Maintenance Supervision and Engineering		
16	(511) Maintenance of Structures		
17	(512) Maintenance of Boiler Plant		
18	(513) Maintenance of Electric Plant		
19	(514) Maintenance of Miscellaneous Steam Plant		
20	TOTAL Maintenance (Enter Total of Lines 15 thru 19)		
21	TOTAL Power Production Expenses-Steam Power (Enter Total lines 13 & 20)		
22	**B. Nuclear Power Generation**		
23	**Operation**		
24	(517) Operation Supervision and Engineering		
25	(518) Fuel		
26	(519) Coolants and Water		
27	(520) Steam Expenses		
28	(521) Steam from Other Sources		
29	(Less) (522) Steam Transferred-Cr.		
30	(523) Electric Expenses		
31	(524) Miscellaneous Nuclear Power Expenses		
32	(525) Rents		
33	TOTAL Operation (Enter Total of lines 24 thru 32)		
34	**Maintenance**		
35	(528) Maintenance Supervision and Engineering		
36	(529) Maintenance of Structures		
37	(530) Maintenance of Reactor Plant Equipment		
38	(531) Maintenance of Electric Plant		
39	(532) Maintenance of Miscellaneous Nuclear Plant		
40	TOTAL Maintenance (Enter Total of lines 35 thru 39)		
41	TOTAL Power Production Expenses-Nuclear Power (Enter Total of lines 33 & 40)		
42	**C. Hydraulic Power Generation**		
43	**Operation**		
44	(535) Operation Supervision and Engineering		
45	(536) Water for Power		
46	(537) Hydraulic Expenses		
47	(538) Electric Expenses		
48	(539) Miscellaneous Hydraulic Power Generation Expenses		
49	(540) Rents		
50	TOTAL Operation (Enter Total of Lines 44 thru 49)		
52	**Maintenance**		
53	(541) Maintenance Supervision and Engineering		
54	(542) Maintenance of Structures		
55	(543) Maintenance of Reservoirs, Dams, and Waterways		
56	(544) Maintenance of Electric Plant		
57	(545) Maintenance of Miscellaneous Hydraulic Plant		
58	TOTAL Maintenance (Enter Total of lines 53 thru 57)		
59	TOTAL Power Production Expenses-Hydraulic Power (Total of Lines 50 and 58)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Accounts (a)	Amount for Current Year (b)	Amount for Previous Year (c)
60	**D. Other Power Generation**		
61	**Operation**		
62	(546) Operation Supervision and Engineering		
63	(547) Fuel		
64	(548) Generation Expenses		
65	(549) Miscellaneous Other Power Generation Expenses		
66	(550) Rents		
67	TOTAL Operation (Enter Total of lines 62 thru 66)		
68	**Maintenance**		
69	(551) Maintenance Supervision and Engineering		
70	(552) Maintenance of Structures		
71	(553) Maintenance of Generating and Electric Plant		
72	(554) Maintenance of Miscellaneous Other Power Generation Plant		
73	TOTAL Maintenance (Enter Total of lines 69 thru 72)		
74	TOTAL Power Production Expenses-Other Power (Enter Total of lines 67 & 73)		
75	**E. Other Power Supply Expenses**		
76	(555) Purchased Power		
77	(556) System Control and Load Dispatching		
78	(557) Other Expenses		
79	TOTAL Other Power Supply Expenses (Enter Total of lines 76 thru 78)		
80	TOTAL Power Production Expenses (Total of lines 21, 41, 59, 74 & 79)		
81	**2. TRANSMISSION EXPENSES**		
82	**Operation**		
83	(560) Operation Supervision and Engineering		
84	(561.1) Load Dispatch-Reliability		
85	(561.2) Load Dispatch-Monitor and Operate Transmission System		
86	(561.3) Load Dispatch-Transmission Service and Scheduling		
87	(561.4) Scheduling, System Control and Dispatch Services		
88	(561.5) Reliability, Planning and Standards Development		
89	(561.6) Transmission Service Studies		
90	(561.7) Generation Interconnection Studies		
91	(561.8) Reliability, Planning and Standards Development Services		
92	(562) Station Expenses		
93	(563) Overhead Lines Expenses		
94	(564) Underground Lines Expenses		
95	(565) Transmission of Electricity by Others		
96	(566) Miscellaneous Transmission Expenses		
97	(567) Rents		
98	TOTAL Operation (Enter Total of lines 83 thru 97)		
99	**Maintenance**		
100	(568) Maintenance Supervision and Engineering		
101	(569) Maintenance of Structures		
102	(569.1) Maintenance of Computer Hardware		
103	(569.2) Maintenance of Computer Software		
104	(569.3) Maintenance of Communication Equipment		
105	(569.4) Maintenance of Miscellaneous Regional Transmission Plant		
106	(570) Maintenance of Station Equipment		
107	(571) Maintenance of Overhead Lines		
108	(572) Maintenance of Underground Lines		
109	(573) Maintenance of Miscellaneous Transmission Plant		
110	TOTAL Maintenance (Enter Total of lines 101 thru 110)		
111	TOTAL Transmission Expenses (Enter Total of lines 98 and 110)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
112	**3. REGIONAL MARKET EXPENSES**		
113	**Operation**		
114	(575.1) Operation Supervision		
115	(575.2) Day-Ahead and Real-Time Market Facilitation		
116	(575.3) Transmission Rights Market Facilitation		
117	(575.4) Capacity Market Facilitation		
118	(575.5) Ancillary Services Market Facilitation		
119	(575.6) Market Monitoring and Compliance		
120	(575.7) Market Facilitation, Monitoring and Compliance Services		
121	(575.8) Rents		
122	Total Operation (Lines 114 thru 120)		
123	**Maintenance**		
124	(576.1) Maintenance of Structures and Improvements		
125	(576.2) Maintenance of Computer Hardware		
126	(576.3) Maintenance of Computer Software		
127	(576.4) Maintenance of Communication Equipment		
128	(576.5) Maintenance of Miscellaneous Market Operation Plant		
129	Total Maintenance (Lines 123 thru 127)		
130	TOTAL Regional Transmission and Market Operation Expenses (Enter Total of lines 121 and 128)		
131	**4. DISTRIBUTION EXPENSES**		
132	**Operation**		
133	(580) Operation Supervision and Engineering		
134	(581) Load Dispatching		
135	(582) Station Expenses		
136	(583) Overhead Line Expenses		
137	(584) Underground Line Expenses		
138	(585) Street Lighting and Signal System Expenses		
139	(586) Meter Expenses		
140	(587) Customer Installations Expenses		
141	(588) Miscellaneous Expenses		
142	(589) Rents		
143	TOTAL Operation (Enter Total of lines 132 thru 141)		
144	**Maintenance**		
145	(590) Maintenance Supervision and Engineering		
146	(591) Maintenance of Structure		
147	(592) Maintenance of Station Equipment		
148	(593) Maintenance of Overhead Lines		
149	(594) Maintenance of Underground Lines		
150	(595) Maintenance of Line Transformers		
151	(596) Maintenance of Street Lighting and Signal Systems		
152	(597) Maintenance of Meters		
153	(598) Maintenance of Miscellaneous Distribution Plant		
154	TOTAL Maintenance (Enter Total of lines 144 thru 152)		
155	TOTAL Distribution Expenses (Enter Total of lines 142 and 153)		
156	**5. CUSTOMER ACCOUNTS EXPENSES**		
157	**Operation**		
158	(901) Supervision		
159	(902) Meter Reading Expenses		
160	(903) Customer Records and Collection Expenses		
161	(904) Uncollectible Accounts		
162	(905) Miscellaneous Customer Accounts Expenses		
163	TOTAL Customer Accounts Expenses (Total of lines 157 thru 161)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
163	**6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES**		
164	**Operation**		
165	(907) Supervision		
166	(908) Customer Assistance Expenses		
167	(909) Informational and Instructional Expenses		
168	(910) Miscellaneous Customer Service and Informational Expenses		
169	TOTAL Customer Service and Information. Expenses (Total lines 165 thru 168)		
170	**7. SALES EXPENSES**		
171	**Operation**		
172	(911) Supervision		
173	(912) Demonstrating and Selling Expenses		
174	(913) Advertising Expenses		
175	(916) Miscellaneous Sales Expenses		
176	TOTAL Sales Expenses (Enter Total of lines 172 thru 175)		
177	**8. ADMINISTRATIVE AND GENERAL EXPENSES**		
178	**Operation**		
179	(920) Administrative and General Salaries		
180	(921) Office Supplies and Expenses		
181	(Less) (922) Administrative Expenses Transferred-Credit		
182	(923) Outside Services Employed		
183	(924) Property Insurance		
184	(925) Injuries and Damages		
185	(926) Employee Pensions and Benefits		
186	(927) Franchise Requirements		
187	(928) Regulatory Commission Expenses		
188	(929) (Less) Duplicate Charges-Cr.		
189	(930.1) General Advertising Expenses		
190	(930.2) Miscellaneous General Expenses		
191	(931) Rents		
192	TOTAL Operation (Enter Total of lines 179 thru 191)		
193	**Maintenance**		
194	(935) Maintenance of General Plant		
195	TOTAL Administrative & General Expenses (Total of lines 192 and 194)		
196	TOTAL Electric Operation and Maintenance Expenses (Total of lines 80, 111, 129, 154, 162, 169, 176, and 195)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Account 403, 404, 405)
(Except amortization of acquisition adjustments)

1. Report in section A for the year the amounts for : (b) Depreciation Expense (Account 403; (c) Depreciation Expense for Asset Retirement Costs (Account 403.1); (d) Amortization of Limited-Term Electric Plant (Account 404); and (e) Amortization of Other Electric Plant (Account 405).
2. Report in Section B the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.
3. Report all available information called for in Section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.
Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of Section C the type of plant included in any sub-account used. In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used. For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), if available, the weighted average remaining life of surviving plant. If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.
4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of the provisions and the plant items to which related.

A. Summary of Depreciation and Amortization Charges

Line No.	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization Of Limited Term Electric Plant (Account 404) (d)	Amortization of Other Electric Plant (Account 405) (e)	Total (f)
1	Intangible Plant					
2	Steam Production Plant					
3	Nuclear Production Plant					
4	Hydraulic Production Plant-Conventional					
5	Hydraulic Production Plant-Pumped Storage					
6	Other Production Plant					
7	Transmission Plant					
8	Distribution Plant					
9	Regional Transmission and Market Operation Plant					
10	General Plant					
11	Common Plant-Electric					
12	TOTAL					

B. Basis for Amortization Charges

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

RESEARCH, DEVELOPMENT AND DEMONSTRATION ACTIVITIES

1. Describe and show below costs incurred and accounts charged during the year for technological research, development, and demonstration (R, D & D) project initiated, continued or concluded during the year. Report also support given to others during the year for jointly-sponsored projects.(Identify recipient regardless of affiliation.) For any R, D & D work carried with others, show separately the respondent's cost for the year and cost chargeable to others (See definition of research, development, and demonstration in Uniform System of Accounts).
2. Indicate in column (a) the applicable classification, as shown below:

Classifications:
A. Electric R, D & D Performed Internally:
(1) Generation
a. hydroelectric
i. Recreation fish and wildlife
ii Other hydroelectric
b. Fossil-fuel steam
c. Internal combustion or gas turbine
d. Nuclear
e. Unconventional generation
f. Siting and heat rejection
(2) Transmission
a. Overhead
b. Underground
(3) Distribution
(4) Regional Transmission and Market Operation
(5) Environment (other than equipment)
(6) Other (Classify and include items in excess of $5,000.)
(7) Total Cost Incurred
B. Electric, R, D & D Performed Externally:
(1) Research Support to the Electrical Research Council or the Electric Power Research Institute

Line No.	Classification (a)	Description (b)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

DISTRIBUTION OF SALARIES AND WAGES

Report below the distribution of total salaries and wages for the year. Segregate amounts originally charged to clearing accounts to Utility Departments, Construction, Plant Removals, and Other Accounts, and enter such amounts in the appropriate lines and columns provided. In determining this segregation of salaries and wages originally charged to clearing accounts, a method of approximation giving substantially correct results may be used.

Line No.	Classification	Direct Payroll Distribution	Allocation of Payroll charged for Clearing Accounts	Total
1	**Electric**			
2	**Operation**			
3	Production			
4	Transmission			
5	Regional Market			
6	Distribution			
7	Customer Accounts			
8	Customer Service and Informational			
9	Sales			
10	Administrative and General			
11	TOTAL Operation (Enter Total of lines 3 thru 10)			
12	**Maintenance**			
13	Production			
14	Transmission			
15	Regional Market			
16	Distribution			
17	Administrative and General			
18	TOTAL Maintenance (Total of lines 12 thru 17)			
19	**Total Operation and Maintenance**			
20	Production (Enter Total of Lines 3 and 13)			
21	Transmission (Enter Total of Lines 4 and 14)			
22	Regional Market (Enter Total of Lines 5 and 15)			
23	Distribution (Enter Total of Lines 6 and 16)			
24	Customer Accounts (Transcribe from Line 7)			
25	Customer Service and Informational (Transcribe from Line 8)			
26	Sales (Transcribe from Line 9)			
27	Administrative and General (Enter Total of Lines 10 and 17)			
28	TOTAL Operation and Maintenance (Total of lines 20 thru 27)			
29	**Gas**			
30	**Operation**			
31	Production-Manufactured Gas			
32	Production-Natural Gas (Including Exploration and Development)			
33	Other Gas Supply			
34	Storage, LNG Terminaling and Processing			
35	Transmission			
36	Distribution			
37	Customer Accounts			
38	Customer Service and Informational			
39	Sales			
40	Administrative and General			
41	TOTAL Operation (Enter Total of lines 31 thru 40)			
42	**Maintenance**			
43	Production-Manufactured Gas			
44	Production-Natural Gas (Including Exploration and Development)			
45	Other Gas Supply			
46	Storage, LNG Terminaling and Processing			
47	Transmission			
48	Distribution			
49	Administrative and General			
50	TOTAL Maintenance (Enter Total of lines 43 thru 49)			

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

AMOUNTS INCLUDED IN ISO/RTO SETTLEMENT STATEMENTS

1. The respondent shall report below the details called for concerning amounts it recorded in Account 555, Purchase Power, and Account 447, Sales for Resale, for items shown on ISO/RTO Settlement Statements.

Line No.	Description of Item(s) (a)	Balance at End of Quarter 1 (b)	Balance at End of Quarter 2 (c)	Balance at End of Quarter 3 (d)	Balance at End of Year (e)
1	Energy				
2	Net Purchases (Account 555)				
3	Net Sales (Account 447)				
4	Transmission Rights				
5	Ancillary Services				
6	Other Items (list separately)				
7					
8					
9					
10					
11					
12	Total				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

TRANSMISSION OF ELECTRICITY BY ISO/RTOs

1. Report in Column (a) the Transmission Owner receiving revenue for the transmission of electricity by the ISO/RTO.
2. Use a separate line of data for each distinct type of transmission service involving the entities listed in Column (a).
3. In Column (b) enter a Statistical Classification code based on the original contractual terms and conditions of the service as follows: FNO – Firm Network Service for Others, FNS – Firm Network Transmission Service for Self, LFP – Long-Term Firm Point-to-Point Transmission Service, OLF – Other Long-Term Firm Transmission Service, SFP – Short-Term Firm Point-to-Point Transmission Reservation, NF – Non-Firm Transmission Service, OS – Other Transmission Service and AD- Out-of-Period Adjustments. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment. See General Instruction for definitions of codes.
4. In column (c) identify the FERC Rate Schedule or tariff Number, on separate lines, list all FERC rate schedules or contract designations under which service, as identified in column (b) was provided.
5. In column (d) report the revenue amounts as shown on bills or vouchers.
6. Report in column (e) the total revenues distributed to the entity listed in column (a).

Line No.	Payment Received By (Transmission Owner Name) (a)	Statistical Classification (b)	FERC Rate Schedule or Tariff Number (c)	Total Revenue By Rate Schedule or Tariff (d)	Total Revenue (e)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
	TOTAL				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

MONTHLY ISO/RTO TRANSMISSION SYSTEM PEAK LOAD

(1) Report the monthly peak load on the respondent's transmission system. If the Respondent has two or more power systems which are not physically integrated, furnish the required information for each non-integrated system.
(2) Report on Column (b) by month the transmission system's peak load.
(3) Report on Column (c) and (d) the specified information for each monthly transmission – system peak load reported on Column (b).
(4) Report on Columns (e) through (i) by month the system's transmission usage by classification. Amounts reported as Through and Out Service in Column (g) are to be excluded from those amounts reported in Columns (e) and (f).
(5) Amounts reported in Column (j) for Total Usage is the sum of Columns (h) and (i).

NAME OF SYSTEM:

Line No.	Month	Monthly Peak MW – Total	Day of Monthly Peak	Hour of Monthly Peak	Imports Into ISO/ RTO	Exports From ISO/RTO	Through and Out Service	Network Service Usage	Point-to-Point Service Usage	Total Usage (MWh)
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
1	January									
2	February									
3	March									
4	Total for Quarter									
5	April									
6	May									
7	June									
8	Total for Quarter									
9	July									
10	August									
11	September									
12	Total for Quarter									
13	October									
14	November									
15	December									
16	Total for Quarter									
17	Total Year to Date									

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

PLANT IN SERVICE AND ACCUMULATED PROVISION FOR DEPRECIATION BY FUNCTION

1. Report below the original cost of plant in service by function. In addition to Account 101, include Account 102, and Account 106. Report in column (b) the original cost of plant in service and in column(c) the accumulated provision for depreciation and Amortization by function.

Line No.	Function	Plant in Service	Accumulated Depreciation And Amortization Balance at
	(a)	(b)	(c)
1	Intangible Plant		
2	Steam Production Plant		
3	Nuclear Production Plant		
4	Hydraulic Production – Conventional		
5	Hydraulic Production - Pumped Storage		
6	Other Production		
7	Transmission		
8	Distribution		
9	Regional Transmission and Market Operation		
10	General		
11	TOTAL (Total of lines 1 through 9)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PRODUCTION, OTHER POWER SUPPLY, TRANSMISSION, **REGIONAL MARKET,** AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional market, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter
1	**1. POWER PRODUCTION AND OTHER SUPPLY EXPENSES**	
2	Steam Power Generation - Operation (500-509)	
3	Steam Power Generation - Maintenance (510-515)	
4	Total Power Production Expenses - Steam Power	
5	Nuclear Power Generation - Operation (517-525)	
6	Nuclear Power Generation – Maintenance (528-532)	
7	Total Power Production Expenses - Nuclear Power	
8	Hydraulic Power Generation - Operation (535-540.1)	
9	Hydraulic Power Generation – Maintenance (541-545.1)	
10	Total Power Production Expenses - Hydraulic Power	
11	Other Power Generation - Operation (546-550.1)	
12	Other Power Generation - Maintenance (551-554.1)	
13	Total Power Production Expenses - Other Power	
14	**Other Power Supply Expenses**	
15	Purchased Power (555)	
16	System Control and Load Dispatching (556)	
17	Other Expenses (557)	
18	Total Other Power Supply Expenses (line 15-17)	
19	Total Power Production Expenses (Total of lines 4, 7, 10, 13 and 18)	
20	**2. TRANSMISSION EXPENSES**	
21	**Transmission Operation Expenses**	
22	(560) Operation Supervision and Engineering	
23	(561.1) Load Dispatch-Reliability	
24	(561.2) Load Dispatch-Monitor and Operate Transmission System	
25	(561.3) Load Dispatch-Transmission Service and Scheduling	
26	(561.4) Scheduling, System Control and Dispatch Services	
27	(561.5) Reliability, Planning and Standards Development	
28	(561.6) Transmission Service Studies	
29	(561.7) Generation Interconnection Studies	
30	(561.8) Reliability, Planning and Standards Development Services	
31	(562) Station Expenses	
32	(563) Overhead Line Expenses	
33	(564) Underground Line Expenses	
34	(565) Transmission of Electricity by Others	
35	(566) Miscellaneous Transmission Expenses	
36	(567) Rents	
37	(567.1) Operation Supplies and Expenses (Non-Major)	
38	TOTAL Transmission Operation Expenses (Lines 22 – 37)	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ELECTRIC PRODUCTION, OTHER POWER SUPPLY, TRANSMISSION, **REGIONAL TRANSMISSION AND MARKET OPERATION,** AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional control and market operation, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter
39	**Transmission Maintenance Expenses**	
40	(568) Maintenance Supervision and Engineering	
41	(569) Maintenance of Structures	
42	(569.1) Maintenance of Computer Hardware	
43	(569.2) Maintenance of Computer Software	
44	(569.3) Maintenance of Communication Equipment	
45	(569.4) Maintenance of Miscellaneous Regional Transmission Plant	
46	(570) Maintenance of Station Equipment	
47	(571) Maintenance Overhead Lines	
48	(572) Maintenance of Underground Lines	
49	(573) Maintenance of Miscellaneous Transmission Plant	
50	(574) Maintenance of Transmission Plant	
51	TOTAL Transmission Maintenance Expenses (Lines 41 – 51)	
52	Total Transmission Expenses (Lines 39 and 52)	
53	**3. REGIONAL MARKET EXPENSES**	
54	Regional Market Operation Expenses	
55	(575.1) Operation Supervision	
56	(575.2) Day-Ahead and Real-Time Market Facilitation	
57	(575.3) Transmission Rights Market Facilitation	
58	(575.4) Capacity Market Facilitation	
59	(575.5) Ancillary Services Market Facilitation	
60	(575.6) Market Monitoring and Compliance	
61	(575.7) Market Facilitation, Monitoring and Compliance Services	
62	Regional Market Operation Expenses (Lines 54–61)	
63	Regional Market Maintenance Expenses	
64	(576.1) Maintenance of Structures and Improvements	
65	(576.2) Maintenance of Computer Hardware	
66	(576.3) Maintenance of Computer Software	
67	(576.4) Maintenance of Communication Equipment	
68	(576.5) Maintenance of Miscellaneous Market Operation Plant	
69	Regional Market Maintenance Expenses (Lines 64-68)	
70	TOTAL Regional Control and Market Operation Expenses (Lines 62 and 69)	
71	**4. DISTRIBUTION EXPENSES**	
72	Distribution Operation Expenses (580-589)	
73	Distribution Maintenance Expenses (590-598)	
74	Total Distribution Expenses (Lines 62 and 63)	
75	TOTAL (Lines 19, 53, 60, and 70)	

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Federal Register

Friday,
December 30, 2005

Part V

Social Security Administration

20 CFR Part 418
Medicare Part D Subsidies; Final Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

RIN 0960–AG03

Medicare Part D Subsidies

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are adding to our regulations a new part to contain rules that we will apply when we evaluate applications for premium and cost-sharing subsidies under the Medicare program. We are including a new subpart, Medicare Part D Subsidies, to this part. This new subpart contains the rules that we use to determine eligibility for premium and cost-sharing subsidies under the Medicare Part D program, which was added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act or MMA). These final rules describe: What the new subpart is about; how we determine whether you are eligible for premium and cost-sharing subsidies; how we redetermine your eligibility for a subsidy; how you apply for a subsidy; how we evaluate your income and resources; when your eligibility for premium and cost-sharing subsidies terminates; how you may report changes in your circumstances; and how you can appeal a determination we make under the Part D subsidy program.

DATES: These final rules are effective on December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Craig Streett, Team Leader, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–9793 or TTY 1–800–966–5906, for information about this **Federal Register** document. 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 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.*

Statutory Provisions

Section 101 of the Medicare Modernization Act (Pub. L. 108–173), which was enacted into law December 8, 2003, adds sections 1860D–1 through 1860D–24 to the Social Security Act (the Act), and establishes a new Part D program for voluntary prescription drug coverage effective January 1, 2006. The Centers for Medicare & Medicaid Services (CMS) has overall responsibility for implementing the voluntary Medicare Part D prescription drug benefit and published final rules on January 28, 2005 at 70 FR 4193. As described in these final rules, we are responsible only for the premium and cost-sharing subsidy (the subsidy) portion of the Medicare Part D prescription drug benefit program. We are authorized to make eligibility determinations, provide appeal procedures, and perform eligibility redeterminations for the Part D subsidy in the 50 States and the District of Columbia. We are not authorized to undertake this task for Medicare beneficiaries who live in the territories or who live outside of the 50 States or the District of Columbia.

Section 702(a)(5) of the Act allows us to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Section 1860D–14 of the Act provides for premium and cost-sharing subsidies of prescription drug coverage for certain individuals with low income and resources. An individual must be entitled to benefits under Medicare Part A or enrolled in Medicare Part B in order to receive a subsidy. Section 1860D–14(a)(3)(B) directs us to make subsidy determinations. It also requires us to provide appeal procedures for subsidy eligibility determinations and to perform redeterminations. (State Medicaid agencies have similar responsibilities that are covered in CMS' final rules. Additionally, CMS will conduct annual redeterminations of deemed status and will reconsider certain CMS low income subsidy (LIS) determinations; CMS LIS reconsideration procedures will be addressed in the agency's operating instructions.) Generally, the agency that processes the subsidy application will handle redeterminations and appeals related to that initial eligibility determination.

Background

The purpose of the subsidy program is to assist some Medicare beneficiaries who have limited financial means with paying for voluntary Medicare prescription drug coverage under the Medicare Part D program. If you have limited income and resources, you may be eligible for a subsidy to help you pay your monthly premium, your copayments, and the annual deductible under your Medicare Part D prescription drug plan. If you are a Medicare beneficiary or are applying for Medicare benefits and you want to receive a subsidy, you must follow a two-step process to obtain prescription drug benefits:

- File a subsidy application either with us or with your State Medicaid Agency to see if you qualify for a subsidy; and
- Enroll with an authorized prescription drug provider for the Medicare Part D prescription drug benefit; i.e., a prescription drug plan. (We do not enroll beneficiaries for Medicare Part D. If you are a Medicare beneficiary, you must take the necessary steps to enroll yourself with a participating approved prescription drug plan or Medicare Advantage plan that offers prescription drug coverage. Sections 423.32–423.34 of 42 CFR discuss the enrollment process, including the enrollment of full benefit dual-eligible individuals. You also may obtain information about enrolling on the Internet at *www.medicare.gov* or by calling CMS at 1–800-Medicare.)

You may take these 2 steps in any order. However, if you have Medicare and receive Medicaid coverage, are enrolled in a Medicare Savings Program within your State, or receive Supplemental Security Income (SSI), you will be deemed eligible for the subsidy effective with the first month you meet any one of these conditions; and you do not need to file a subsidy application.

Certain individuals with both Medicare and Medicaid, with Medicare Savings Programs, or with Medicare and receiving SSI payments but who have not enrolled in a prescription drug plan, will be able to take advantage of special enrollment processes. The special enrollment processes are discussed in the preamble to CMS' final rules published January 28, 2005 at 70 FR 4205–4209 and in CMS's regulations at 42 CFR 423.34.

How To Become Eligible for a Subsidy

Section 1860D–14 of the Act requires us to take applications for subsidies from individuals who are applying for Medicare Part D prescription drug coverage. These final rules describe the requirements you must meet to become eligible for a subsidy and what conditions will prevent you from receiving a subsidy. Criteria for eligibility include:

- You must be entitled to benefits under Medicare Part A (Hospital Insurance) and/or enrolled in Medicare Part B (Supplementary Medical Insurance) under title XVIII of the Act;

• You must be enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage by the end of your enrollment period;

• You must reside in the United States as defined in § 418.3010;

• You (and your living with spouse, if applicable) must meet the income and resource requirements of the subsidy program; and

• You must apply for the subsidy.

Conditions that could prevent you from receiving a subsidy include:

• You lose entitlement to or are not enrolled in Medicare Part A and you also lose eligibility for or are not enrolled in Medicare Part B, or

• You do not enroll or you are no longer enrolled with a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage.

These final rules also tell you that if we made the original determination of subsidy eligibility, we will periodically review your subsidy eligibility to make sure that you are still eligible for a subsidy and to determine whether you should receive a full or partial subsidy. The amount of subsidies for Part D premiums, deductibles, and co-payments will be based on the amount of your income and resources (and those of your spouse, if applicable) and your family size.

Section 1860D–14(a)(3)(B)(ii) of the Act specifies that initial subsidy determinations will remain in effect for a period to be determined by the Secretary of Health and Human Services (HHS) but not to exceed 1 year. Section 1860D–14(a)(3)(B)(iv) provides that we shall conduct redeterminations periodically. We interpret these provisions together as envisioning prospective determinations that remain unchanged until we conduct the next redetermination of eligibility. To comply with the 1-year limitation in section 1860D–14(a)(3)(B)(ii), we will conduct the first redetermination within 12 months of our determination that you are eligible for a subsidy.

However, we recognize that certain life events could have a significant impact on your income, resources or family size which in turn could impact your eligibility for a subsidy or the amount of your subsidy. Therefore, these final rules contain an exception to the general rule that a determination remains in effect until we conduct the next redetermination.

Under that exception, if you are a subsidy-eligible individual and your income, resources or family size changes because of marriage, divorce, annulment, separation, resumption of members of a couple living together, or the death of your spouse, you may ask us to redetermine your subsidy based on your new circumstances. When you report such a change or we receive such a report from another source, we will send you a redetermination form. You must complete the form and return it to us so that we can redetermine your subsidy. The redetermined subsidy, if any, will be effective with the month after the month you request us to redetermine your subsidy. We will process other changes, such as the loss of a job, which you would report, in conjunction with your next redetermination.

Eligibility and Applying for a Subsidy

Attaining eligibility for the subsidy under Medicare Part D is a two-step process. You must:

• Apply for the subsidy with us or your State Medicaid agency, and

• Enroll in Medicare Part D by enrolling in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage.

You may take either step first, but the subsidy will not begin until you are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage. If you file your application for the subsidy before the month you are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, the earliest month you can receive the subsidy is the month you are enrolled in such a plan.

These final rules apply when you file for a Medicare Part D subsidy with us. As a condition of eligibility for the subsidy, section 1860D–14(a)(3) of the Act requires that you, or your personal representative (as defined in 42 CFR 423.772), file an application with us or a State office that accepts Medicaid applications. Our application may be printed in paper form, completed by our employees on computer screens, or available on our Internet Web site, Social Security Online at *http://www.socialsecurity.gov.*

When you file an application we will determine your eligibility and provide you with appeal rights. If we find that you are eligible for the subsidy, we will also determine whether you should receive a full or partial subsidy. Timely filing also assures that you can receive the subsidy for any months you are eligible. If you inquire orally or in writing about the subsidy and tell us you want to file a subsidy application, or if you partially complete the subsidy application on our Internet Web site, we will use the date of your inquiry or the date we receive a partially completed Internet subsidy application from our Web site as your filing date for the subsidy if the requirements in § 418.3230 are met.

Your application for the subsidy remains in effect until we make a final determination on it. As stated in § 418.3620, our initial determination is binding unless you request an appeal within the time period stated in § 418.3630(a) and our decision on the appeal is binding unless you file an action in Federal district court seeking review of our final decision (see § 418.3675). If you timely file an appeal of our initial determination, your application for the subsidy remains in effect until we make a decision on your appeal. If you are not enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage when you file your subsidy application, we will write and tell you about your eligibility for the subsidy and that you must be enrolled in such a plan in order to receive a subsidy.

How We Evaluate Your Income

Section 1860D–14(a)(1)–(3) of the Act establishes income limits for eligibility for the Medicare Part D subsidy. Therefore, we will require you to provide information about the income you receive. If you are married and living with your spouse, we will also require you to provide information about your spouse's income. These final rules explain what we consider income, what we exclude from income counting, and how we will compute the amount of an individual's countable income.

We will count both earned income and unearned income. Earned income consists of wages and net earnings from self-employment. Unearned income is any income that is not wages or net earnings from self-employment. Unearned income includes Social Security benefits, Veterans benefits, public and private pensions, annuities, and any support and maintenance provided to you.

We will not count all of the money you receive when we determine your eligibility for the subsidy. We will apply certain exclusions to income you receive when we determine countable income. As directed by the new legislation, these exclusions are modeled after the exclusions used in the SSI program. For example, we will exclude up to $20 per month ($240 per year) of your income. In addition, we will exclude from unearned income the first $60 per calendar quarter of income that is irregular or infrequent; e.g., cash received as a birthday gift, and the first $30 per calendar quarter of earned income that is irregular or infrequent.

We will also exclude all interest and dividends.

We will exclude up to $65 per month ($780 per year) and one-half of the remainder of your earned income (or your and your spouse's combined earned income). We also will exclude a portion of earned income if you are disabled under Social Security rules and have expenses related to your impairment that you must pay in order for you to work. We call these expenses impairment-related work expenses. Similarly, we will exclude a portion of your earned income if you are blind under Social Security rules and have expenses that must be paid in order for you to work. We will apply these exclusions based on these percentages in lieu of determining the actual work related expense in each case. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for impairment-related work expenses will be 16.3 percent of the gross earnings; the exclusion for blind work expenses will be 25 percent of the gross earnings. However, if you have expenses that exceed the average, we will give you the opportunity to present evidence of your actual expenses and adjust the amount of earned income excluded accordingly. We may adjust the percentages if the average percentage of gross earnings excluded for SSI recipients with disability related or blind work expenses changes. If we make such a change we will publish a notice in the **Federal Register**.

How We Evaluate Your Resources

Section 1860D–14(a)(3)(D) of the Act establishes resource limits for eligibility for the Medicare Part D subsidy. Therefore, we will require you to provide information about your resources. If you are married and living with your spouse we also will require you to provide information about your spouse's resources. These final rules explain what resources we will count and what resources we will not count; i.e., exclude from counting. As directed by the legislation, the resource exclusions are modeled after the resource exclusions in the SSI program.

We will count liquid resources, which are cash, financial accounts, financial instruments, and other property that can be converted to cash within 20 workdays. Liquid resources can include stocks, bonds, mutual fund shares, insurance policies, and financial institution accounts, including checking and savings accounts or retirement accounts, such as individual retirement accounts and 401(k) accounts, revocable trusts, and funds in an irrevocable trust if the individual can direct the use of those funds. We will presume that these types of resources can be converted to cash within 20 workdays and are countable. However, if the individual establishes that a particular resource cannot be converted to cash within 20 workdays, we will not count it as a resource in the subsidy determination. We also will count the equity value of real property that you own except for the home that is your principal place of residence and the land it resides on. We will not count other nonliquid resources such as motor vehicles and irrevocable trusts.

Verification

We will compare the information you provide on your application to information in our records and information we obtain from other Federal agencies. If necessary, we will contact you to reconcile any discrepancies between the information on your application and the information from the Federal agencies. We may ask you to submit documents, such as bank statements, to resolve discrepancies.

Changes in Your Subsidy

Section 1860D–14(a)(3)(B)(iv) of the Act requires us to redetermine your continuing subsidy eligibility periodically. During those redeterminations, we will reevaluate your income and resources to see if you continue to be eligible for a subsidy. If you are still eligible there may be an increase or decrease in the amount of your subsidy. These final rules explain how we will make adjustments to or terminate subsidies as a result of periodic redeterminations or redeterminations based on reports of death, marriage, divorce, annulment, separation, or resumption of living together. Any determinations made as a result of changes in your circumstances will be a new initial determination, and we will notify you of the determination in writing and explain your right to appeal that determination.

If You Disagree With Our Determination of Your Subsidy

Section 1860D–14(a)(3)(B)(iv)(II) of the Act requires us to establish appeal procedures for subsidy eligibility determinations similar to the appeal procedure for the SSI program. The procedures in these final rules will apply only if we, not a State Medicaid agency, make the initial determination. If CMS determines that you no longer meet deemed status because you are no longer eligible for SSI (and CMS determines you are not eligible for Medicaid or the Medicare Savings Program), CMS may refer you to us about your SSI eligibility.

We have a process for you to appeal our eligibility determination on your subsidy application, and our determinations of whether you can receive a full or partial subsidy, of an adjustment to your subsidy, or of a termination of your subsidy eligibility. We also explain the rights of your spouse whose eligibility could be adversely affected by your appeal. In these final rules, the term ''the appeal process,'' means the same as ''the administrative review process,'' and we use these terms interchangeably throughout.

The administrative review process will provide you one level of administrative review. Under these final rules, if you decide you want to appeal, you may choose between either a hearing via telephone or a case review. Both the telephone hearing and the case review are at the same level of the appeals process. You will have an opportunity to review the information we use in making a decision and to give us more information that you may want us to consider. You can also have witnesses at your hearing if you choose.

In addition, you can have a personal representative help you with your appeal or represent you. We will work with your representative just as we would work with you. CMS regulations (42 CFR 423.772), which we will apply here, define a personal representative as:

- An individual who is authorized to act on behalf of the applicant;
- If the applicant is incapacitated or incompetent, someone acting responsibly on his or her behalf, or
- An individual of the applicant's choice who is requested by the applicant to act as his or her representative in the application process.

You must contact us within 60 days of the date you receive notice of the initial determination to ask for an appeal of your subsidy determination. If you miss the deadline for requesting an appeal, you can request more time if you can show us you have good cause for missing the deadline. Once we make a decision on your appeal, we will send you a written notice explaining our decision. If you are dissatisfied with our final decision, you may file an action in Federal district court. As we explain in § 418.3670, if we dismiss your appeal, we will mail a written notice of the dismissal to you, but the dismissal is not subject to judicial review and is binding on you unless we vacate it.

The issues that we will review are the issues with which you disagree. We may consider other issues, but we will provide you with advance notice of these other issues, as explained in § 418.3625.

We may correct clerical errors if discovered within 60 days of the date of our initial determination. We will notify you of our revised determination as explained in § 418.3678.

Explanation of Part 418

Part 418 consists of four subparts. We are reserving subparts A–C for future use. We are adding a new subpart D, Medicare Part D Subsidies, which contains the rules that we use to make determinations and decisions about eligibility for the subsidy.

Following is a description of each section for subpart D.

Introduction, General Provisions, and Definitions

- Section 418.3001 describes what subpart D is about, lists the groups of sections, and the subject of each group.
- Section 418.3005 explains that the purpose of the subsidy program is to offer help with prescription drug costs to individuals with limited financial means who meet specific requirements.
- Section 418.3010 contains definitions of terms used throughout this subpart.

Eligibility for a Medicare Prescription Drug Subsidy

- Section 418.3101 lists the requirements that you must meet to establish eligibility for a subsidy.
- Section 418.3105 provides a cross-reference to CMS' regulations concerning who does not need to file an application for a subsidy.
- Section 418.3110 explains what happens when you apply for a subsidy.
- Section 418.3115 describes what will prevent you from becoming eligible for a subsidy, even if you meet the requirements in § 418.3101.
- Section 418.3120 describes the changes in your circumstances that may affect your eligibility for a subsidy or whether you can receive a full or partial subsidy, explains when we may make a redetermination of your eligibility when your circumstances change, and explains that we will notify you of our determination.
- Section 418.3123 explains when a change in your subsidy is effective.
- Section 418.3125 defines the term ''redetermination'' and explains when we conduct redeterminations.

Filing of Applications

- Section 418.3201 explains that an application is usually necessary for a subsidy and why.
- Section 418.3205 explains when an application for a subsidy becomes a claim for a subsidy.
- Section 418.3210 describes an application for a subsidy.
- Section 418.3215 explains who may file an application for a subsidy.
- Section 418.3220 explains when we consider an application for a subsidy filed and lists places it can be filed.
- Section 418.3225 explains how long an application for a subsidy will remain in effect.
- Section 418.3230 explains when we will use the date you make an oral or written inquiry indicating your intent to file for the subsidy as your subsidy application filing date.

Income

- Section 418.3301 provides the general definition of income that will be used for subsidy determinations.
- Section 418.3305 provides a general description of what is not considered income for purposes of determining eligibility for a subsidy and if eligible, whether you should receive a full or partial subsidy.
- Section 418.3310 explains whose income will be counted when we determine eligibility for a subsidy and if eligible, whether you should receive a full or partial subsidy.
- Section 418.3315 describes earned income.
- Section 418.3320 explains how we count earned income, including when it is considered received, how we count net earnings from self-employment, how we count royalties and honoraria, and how we determine the time periods for which the earned income is counted.
- Section 418.3325 explains that not all earned income will be counted and lists the earned income exclusions that may apply.
- Section 418.3330 provides the general definition of unearned income.
- Section 418.3335 describes the types of unearned income that will be counted.
- Section 418.3340 describes how we count unearned income, including when it is considered received, how we determine how much of your income is countable, and how we determine the time periods for which the unearned income is counted.
- Section 418.3345 explains how we will determine the value of unearned income, if any, received in the form of in-kind support and maintenance.
- Section 418.3350 explains that not all unearned income is countable and lists the exclusions that may apply.

Resources

- Section 418.3401 provides the general definition of resources that will be used for purposes of subsidy eligibility determinations.
- Section 418.3405 describes the types of resources that are considered for purposes of subsidy eligibility determinations and lists the type of resources that are considered liquid.
- Section 418.3410 explains whose resources will be counted.
- Section 418.3415 explains that we determine the value of countable resources as of the first day of the month for which a determination will be made.
- Section 418.3420 explains how we count funds held in financial institution accounts.
- Section 418.3425 provides a list of assets that will not be counted as resources.

Adjustments and Terminations

- Section 418.3501 explains the types of events that could cause us to increase or reduce your subsidy or to terminate your eligibility for a subsidy.
- Section 418.3505 describes the effects of increases, reductions, and terminations of subsidies.
- Section 418.3510 explains that before we increase, reduce, or terminate your subsidy, we must send you a written notice with appeal rights.
- Section 418.3515 explains that after we terminate a subsidy, you must generally file a new application to be eligible for a subsidy again.

Determinations and the Administrative Review Process

- Section 418.3601 explains your rights and your spouse's rights under the administrative review process.
- Section 418.3605 explains that initial determinations are determinations we make that are subject to administrative and judicial review and provides examples of determinations that are initial determinations.
- Section 418.3610 lists administrative actions that are not initial determinations. Although we may review these actions, they are not subject to administrative or judicial review.
- Section 418.3615 explains that we will mail you a notice whenever we make an initial determination in your case. The notice will tell you what our determination is, our reasons for making the determination, and your right to request an appeal of the determination.

- Section 418.3620 explains that an initial determination is binding unless you request an appeal within the stated time period or we revise it as explained in § 418.3678.
- Section 418.3625 describes the administrative review process. This section also explains that if you are dissatisfied with our final decision, you may request judicial review.
- Section 418.3630 explains how to file a request for a hearing and that you may ask for more time to request your appeal if you had good cause for missing the 60-day deadline.
- Section 418.3635 explains who can request administrative review on your behalf.
- Section 418.3640 explains the standards we follow in determining whether you had good cause for missing the 60-day deadline to request a review.
- Section 418.3645 explains under what circumstances the decision-maker may be disqualified.
- Section 418.3650 explains that we make a decision based on the information we have and any other information you provide.
- Section 418.3655 explains that we will send you a notice of our decision on the appeal that gives you the right to judicial review.
- Section 418.3665 explains under what circumstances your request for administrative review may be dismissed.
- Section 418.3670 explains how we will notify you if your request for administrative review is dismissed.
- Section 418.3675 explains that our final decision on appeal is binding unless you request judicial review within the stated time or we revise it as explained in § 418.3678.
- Section 418.3678 explains the process for correcting Agency clerical errors.
- Section 418.3680 explains what happens if a Federal court remands your case to us.

Public Comments

On March 4, 2005, we published proposed rules in the **Federal Register** at 70 FR 10558 and provided a 60-day period for interested persons to comment. We received comments from 22 organizations and one individual. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the following discussion. We have tried to present all views adequately and carefully address all of the issues raised by the commenters that are within the scope of the proposed rules.

Introduction, General Provisions and Definitions

Comment: One commenter recommended that we revise the proposed rules to provide guidance to States on how to verify income and resources, and how to process redeterminations and appeals.

Response: As noted in the preamble to the proposed rules, these rules only address our processing of applications, redeterminations and appeals. We have no authority to regulate the States in this area. CMS oversees the State's participation in this program and issued its own rules that the States are expected to follow on January 28, 2005 (70 FR 4193). CMS also issued additional guidance to the States in a document dated May 25, 2005. This guidance is available on CMS' Web site at *http://www.cms.hhs.gov/States/03_lowincomesubsidy.asp.*

Comment: Six commenters suggested that the final rules include time limits within which we must process applications, redeterminations, and appeals.

Response: We have designed a largely automated process to ensure timely processing of applications, redeterminations and appeals. We intend to complete all actions as quickly as possible. We expect that most applications and redeterminations will be processed expeditiously. However, there are several aspects of the process that make it impossible to guarantee a specific processing time. For example, if information reported on the application conflicts with information obtained from other Federal agencies regarding an applicant's income or resources, we will need to contact the applicant to reconcile the discrepancy, which might increase the time needed to process the application. We also expect to receive some applications that have not been fully completed that will require additional time to complete before processing. Furthermore, because this is a new program, it is difficult to anticipate the volumes of applications, redeterminations, or appeals that we will receive. The volume of receipts could impact the processing time and make it inappropriate to set specific time limits for acting on an appeal. Lastly, the legislation imposes no such time limits, and we do not believe it advisable for us to do so.

In evaluating this comment and reviewing the relevant proposed rules, we detected an inadvertent error in § 418.3225(c). That section stated that individuals who applied for the subsidy but were not yet entitled to Medicare Part A or enrolled in Medicare Part B would receive a letter explaining their eligibility for the subsidy provided they become so entitled and/or enrolled. However, because entitlement to Medicare Part A or enrollment in Medicare Part B is a criterion for eligibility for a subsidy (in addition to enrollment in a Part D plan), we will not be able to make a subsidy eligibility determination in the absence of entitlement to or enrollment in Medicare Part A or Part B. (The CMS regulations at 42 CFR 423.774 permit a subsidy eligibility determination to be made for Medicare beneficiaries not yet enrolled in a prescription drug plan, but they do not provide similar authority regarding individuals who do not yet have Medicare coverage.) Therefore, we are revising § 418.3225(c) to state that if you apply for the subsidy before you are entitled to Medicare Part A and/or enrolled in Medicare Part B but you appear to be in an enrollment period, the notice we send will advise you that we will not take any action on your application until you become entitled to Medicare Part A and/or enrolled in Medicare Part B. If you do not appear to be in an enrollment period, the notice will advise you that you are not eligible for the subsidy because you are not entitled to Medicare Part A or enrolled in Medicare Part B. This letter will also explain your appeal rights.

Comment: One commenter stated that the Notice of Termination should be sent 30 days prior to the termination date.

Response: The MMA instructed us to establish a simplified program. In keeping with the directive, we are following notice guidelines used in other programs that we administer. As a result, the Notice of Termination explains that the beneficiary will receive continuation of their subsidy if he or she appeals within 10 days, and further explains that the beneficiary has 60 days to appeal. Additionally, the beneficiary can request good cause for late filing of an appeal if he/she fails to meet the 10 and 60-day deadlines.

Comment: One commenter suggested that the regulations should include a provision requiring us to issue all notices in alternate language formats upon claimant request.

Response: Although this is a valid concern that warrants further consideration, we have not adopted this comment. The only alternate language format for notices we are currently able to offer is Spanish; however, this is not available to Railroad Retirement beneficiaries because we do not have a record of their preference for a Spanish notice. We will investigate expanding

our ability to offer other alternate language formats in the future.

Comment: One commenter stated that we should hire enough staff to handle the new workload.

Response: This comment is not within the scope of these rules. However, we have put a great deal of effort into determining the amount of staff that will be needed, as well as the hiring and training of the additional staff.

Eligibility for a Medicare Prescription Drug Subsidy

Comment: Nine commenters said that the rules should state that the low-income subsidy shall not negatively affect the eligibility of any recipient for other Federal benefits programs.

Response: Since the Act does not address the effect of the subsidy on other Federal programs or provide a specific exclusion, and since we have no authority to instruct other agencies, this recommendation is beyond the scope of these rules. However, CMS has prepared several fact sheets explaining the impact of the subsidy on various Federal programs. Those fact sheets are available at CMS' Web site, *www.Medicare.gov.* In evaluating this comment, we noticed that our proposed rules were not sufficiently clear about how income excluded by other Federal programs would be treated for purposes of determining eligibility for the subsidy. Therefore, we are revising § 418.3350(b), by adding a reference to § 416.1124(b) of our rules to clarify that income, excluded by the SSI program because it is excluded under other Federal statutes, will also be excluded for purposes of determining eligibility for the subsidy.

Comment: Nine commenters suggested that we add explicit language to explain when eligibility is effective for beneficiaries with deemed eligibility status.

Response: We agree with this comment and have revised § 418.3105 to clarify that if beneficiaries have deemed eligibility status because they receive Medicaid coverage, are enrolled in a Medicare Savings Program within their State, or receive SSI and have Medicare, then their subsidy is effective with the first month they have deemed eligibility status.

Comment: Nine commenters said that the rules should include a procedure to screen applicants for eligibility for Medicare Savings Programs.

Response: We believe that this is a procedural matter that does not require us to revise our rules. However, our operating guides include instructions on screening for these cases.

Comment: Nine commenters said that we should adopt a policy of continuous eligibility where beneficiaries retain eligibility for a full 12 months, regardless of any income changes.

Response: Following the guidelines in CMS regulations at 42 CFR 423.780, we will determine eligibility and subsidy percentage for a calendar year. CMS will make the subsidy amount determination. These determinations will remain in effect throughout the year, unless a beneficiary reports a subsidy-changing event described in § 418.3120(a) or the beneficiary becomes deemed eligible for a full subsidy.

Comment: Two commenters said that we should use data exchange information to determine if beneficiaries qualify for a more generous subsidy.

Response: The rules state at § 418.3120(b)(1) that we will use information we receive from the beneficiary or from data exchanges with Federal agencies to determine the correct subsidy amount. Depending on the new information we receive, the subsidy may increase, decrease, or remain unchanged. Except as provided in § 418.3120(a), we will use any income or resource information obtained via data exchange when we determine a person's continuing eligibility for the next calendar year.

Comment: One commenter said that we should specify a time frame for enrollment in a Medicare Advantage plan.

Response: Medicare Advantage plans and enrollment rules fall under the jurisdiction of HHS and CMS. Therefore, we do not have the authority to implement rules governing Medicare Advantage plans.

Comment: One commenter said that we should develop processes to advise applicants whose application for the subsidy has been denied that they might qualify for Medicaid or a Medicare Savings Program.

Response: We are aware of the importance of making referrals to other programs. Our notices will advise all applicants of their potential eligibility for a Medicare Savings Program.

Comment: One commenter said that late enrollment penalties should not be assessed for individuals who have their applications denied when they are not enrolled in a plan but later have their claims allowed.

Response: The policies for late enrollment penalties are under the control of CMS. Therefore, we are not authorized to implement policies governing late enrollment penalties.

Comment: Three commenters asked that we provide greater detail in the regulations about how we will conduct redeterminations of subsidy eligibility. They suggested that we adopt a ''passive'' redetermination process, in which we advise the beneficiary about the information we have, and the beneficiary is only required to respond if the information is inaccurate. They suggested that we limit the number of times we will conduct a redetermination in a given period. The commenters explain that this would enable a simple redetermination process that would not be a burden on us or on beneficiaries.

Response: We agree that the redetermination process should be simple and should not be burdensome. For these reasons, we plan to use a ''passive'' redetermination process for a beneficiary's first scheduled redetermination. Further, we do not plan to conduct a redetermination for every beneficiary every year, but will instead schedule redeterminations based on the likelihood that an individual's situation may change. We expect this process to fulfill our responsibility to maintain the integrity and accuracy of the subsidy program, while minimizing burdens placed on us and on beneficiaries. However, without further experience we cannot commit ourselves to the ''passive'' redetermination process or any particular redetermination frequency, and therefore we are not revising the regulation to address these issues. Experience may tell us that a different process better serves the integrity of the program and interests of beneficiaries. The law gives us broad discretion, which we exercise in these regulations, to determine the procedures for conducting redeterminations. However, based on these comments, we are changing § 418.3110(c) and § 418.3225(b) to eliminate the statement that we will terminate subsidy eligibility if an individual has not yet enrolled in a prescription drug plan at the time of a redetermination. We are making this change because some situations could develop in the future where an individual will be enrolled in a drug plan but the effective date will be later than our redetermination. We plan to monitor our redetermination process in order to determine whether any further changes are warranted.

Comment: Four commenters suggest that changes that would affect the subsidy amount, such as in income, resources, household composition, or enrollment in a Medicare Savings Program, could be reported at any time and should become effective immediately, or a month after the month of the report of the change, rather than delaying the effect. They are concerned about the fact that these changes are not

effective until the January following the report. They believe this would be disadvantageous for beneficiaries who have a decrease in income or resources, but will continue to receive the same subsidy amount until a redetermination is completed.

Response: Section 418.3110(d)(3) of these final rules clarify that a person who has been denied eligibility for a prescription drug subsidy may reapply any time their situation changes. Individuals already receiving a subsidy may report significant changes at any time. However, in keeping with the direction provided by section 1860D–14 of the Act, we established a simplified application form and process for this program. One technique that we adopted to maintain a simplified process was that eligibility determinations will be based on determinations of yearly income and resource amounts. The determination remains in effect for a calendar year unless the beneficiary reports one of the six subsidy changing events listed in the rules, appeals the initial determination, or becomes eligible for a program that would cause deemed eligibility for a full subsidy. This approach ensures that the individuals found eligible for subsidies will have continuous eligibility and will not be impacted by monthly income changes. Also, beneficiaries are not burdened with reporting responsibilities. This comment did alert us to one possible subsidy-changing event that we inadvertently omitted, that of a change in household composition due to a separated married couple resuming living together. We have revised § 418.3120 to reflect this change.

Filing of Application

Comment: One commenter said that we should use a term such as ''helper'' as synonymous with ''representative'' and specify that representatives are always allowed to sign an application.

Response: We follow CMS' policy concerning representatives in the Medicare program as defined by CMS' regulations at 42 CFR 423.772. This definition makes it clear, however, that representatives are fully authorized to act on a person's behalf.

Comment: One commenter suggested that we eliminate the penalty clause on the application. Another commenter said that the form should not have been drafted prior to the issuance of these rules and that it should be revised to consider any comments received on these rules.

Response: We published three notices in the **Federal Register** on July 30, 2004 (69 FR 45879), September 30, 2004 (69 FR 58578) and November 17, 2004 (69 FR 67379). In these notices, we gave the public an opportunity to comment on the application form. We received a number of comments on the form which we evaluated before the final version was approved. None of the comments received on these rules will impact the application. However, we will continue to evaluate and revise the form when changes appear necessary.

Comment: Ten commenters made the following comments about various aspects of the application process:

- Allow more time to submit requested information, so that applicants who may be mentally or physically unable to comply will have an adequate opportunity to respond.
- Clarify how we will assist when an applicant fails to submit requested information.
- Contact the applicant and explain what is needed to complete the application.
- Give the applicant 180 days to complete the application.
- Specify a time frame to process incomplete applications and clarify the rules we will follow to process them.
- State that we will send a written notice giving a deadline to submit the required information.

Response: These comments deal with procedural issues and are not within the scope of these rules. However, we have reviewed the operating instructions and believe they address the concerns raised by the commenters. We will continue to monitor the process and make changes if necessary.

Income

Comment: Five commenters recommended that we revise § 418.3335 to remove in-kind support and maintenance from consideration as countable income. They asserted that under MMA, we have the authority to exclude consideration of in-kind support and maintenance in making eligibility determinations. Four of the five commenters pointed out that the Medicare Savings Program uses SSI methodology to determine countable income but the model Medicare Savings Program application created by CMS does not include in-kind support and maintenance. They further pointed out that it could be difficult for individuals to provide information about household expenses which might discourage potential beneficiaries from filing a claim.

Response: After careful consideration, we decided not to adopt this recommended change. Section 1860D–14(a)(3)(C)(i) of the Act provides that income for subsidy eligibility shall be determined in the manner prescribed in section 1905(p)(1)(B) of the Act without regard to the application of section 1902(r)(2). Section 1905(p)(1)(B) of the Act provides that income will be determined under section 1612 of the Act. Section 1902(r)(2) provides the authority for States to use income and resources methodologies for certain groups of Medicaid eligibles that are less strict than those used in the SSI program, but section 1860D–14(a)(3)(C)(i) specifically precludes us from using those less strict rules. Therefore, we must follow the income-counting requirements of section 1612 which provides that in-kind support and maintenance will be counted as income with a maximum value of one-third of the applicable SSI Federal benefit rate, although we have simplified some of the rules consistent with Congress' intent.

Comment: One commenter recommended that we simplify the in-kind support and maintenance determination described in § 418.3345 by allowing beneficiaries to use a default dollar value equal to one-third of the SSI Federal benefit rate unless the beneficiary alleges a dollar amount less than the default value.

Response: We do not agree that permitting beneficiaries to use a default dollar value equal to one-third of the SSI Federal benefit rate would simplify in-kind support and maintenance determinations. In addition, we are concerned that offering individuals the option of using a default amount could inappropriately encourage individuals to allege the default amount instead of the actual amount which could be lower and, therefore, beneficial to the individual. Section 418.3345(b) of the final rules states that we will count in-kind support and maintenance as income only up to one-third of the applicable SSI Federal benefit rate. Section 418.3345(a) of the final rules states that the amount of income derived from in-kind support and maintenance is the current market value of the food and shelter provided by other people. When the current market value of the in-kind support and maintenance is less than one-third of the applicable Federal benefit rate, only the current market value is counted as income. However, to make this clear in the regulations, we have revised § 418.3345(b) to state that if the current market value of in-kind support and maintenance the individual receives is worth less than one-third of the applicable monthly SSI Federal benefit rate, we count only the current market value as income.

Comment: One commenter stated that the rules in § 418.3345 do not offer a streamlined approach that enables beneficiaries to determine how much, if any, in-kind support and maintenance they receive. The commenter recommended that we reduce the amount of the maximum countable in-kind support and maintenance to below one-third of the Federal SSI benefit rate. The commenter further recommended that we provide a streamlined methodology for beneficiaries to calculate in-kind support and maintenance.

Response: After careful consideration, we decided not to adopt these recommended changes. The authority to count in-kind support and maintenance as income is derived from section 1612(a) of the Act. This section provides that the countable income derived from in-kind support and maintenance is equal to one-third of the Federal SSI benefit rate. The statute does not provide the authority to establish a lower maximum countable amount. We will count less than the maximum amount as income when the beneficiary receives in-kind support and maintenance that is worth less than the maximum. Furthermore, we are providing a streamlined process for determining in-kind support and maintenance which requires that the beneficiary answer only one question on the subsidy application. By limiting the application to only one question, we have developed a process that is very streamlined, and is much simpler than the SSI process for determining in-kind support and maintenance.

Comment: Nine commenters stated that the Student Earned Income Exclusion (SEIE) should be applied to individuals who apply for the subsidy. In the SSI program, the SEIE applies to individuals under age 22 who are regularly attending school and who have earned income. The SEIE excludes earned income up to a maximum of $5670 (in 2005) per year. The commenters state that this exclusion would permit disabled students to gain work experience without jeopardizing eligibility for the subsidy.

Response: We expect that prescription drug subsidy claims involving individuals who could meet all of the requirements for the student earned income exclusion will be very rare. We are still analyzing the potential impact of the prescription drug subsidy on the disabled student population who have Medicare coverage and will revisit this area in subsequent regulations if appropriate.

Comment: Nine commenters stated that the rules in § 418.3325 should provide an exclusion for earned income received by a Social Security Disability Insurance (SSDI) beneficiary during a trial work period or an unsuccessful work attempt. The same commenters stated that the regulation also should provide an exclusion for earned income of an SSDI beneficiary received as a result of a work-related subsidy or special condition. Under SSDI rules, a work-related subsidy exclusion is applied when an individual's earnings exceed the reasonable value of the work performed, and we count only the pay that is actually earned. Under SSDI rules, if work is done under special conditions, we may determine that the work does not show that the individual can perform substantial gainful activity. These commenters also stated that the regulations should permit SSDI beneficiaries to deduct unincurred business expenses when determining countable self employment income. An unincurred business expense occurs when a sponsoring agency or another person pays certain business expenses for the individual who is attempting to work. The commenters stated that not providing these earned income exclusions would be a disincentive for SSDI beneficiaries who might not try working because their earnings could cause them to lose eligibility for the subsidy.

Response: After careful consideration, we decided not to adopt these recommended changes. The earned income exclusions proposed by the commenters pertain only to the SSDI program under title II of the Act. For purposes of determining subsidy eligibility, section 1860D–14(a)(3)(C) of the Act provides that income is determined in the manner described in section 1905(p)(1)(B) of the Act; that is, under the SSI methodology provided in section 1612 of the Act. Section 1612 describes what income is countable and what income is excludable and does not provide for these earned income exclusions.

Comment: Fourteen commenters stated that the rules in § 418.3325(b)(5) and (b)(7) should provide that impairment related work expenses (IRWE) and blind work expenses (BWE) should exclude the average percentage of gross earnings or the actual expenses, whichever is greater.

Response: The rules in § 418.3325(b)(5) and (b)(7) already provide that actual expenses for IRWE and BWE will be used if they are greater than the average percentage of such expenses. If the actual expenses are not greater, then the average percentage will be excluded automatically when the individual indicates on the application that he or she has such expenses.

Comment: One commenter stated that if greater than average IRWEs and BWEs are not automatically considered, a clear procedure and timeline for establishing greater than average IRWEs and BWEs must be established so that beneficiaries are aware that their actual expenses will be considered if higher than the average expenses. The commenter further stated that the rules lack procedural availability or timelines within which SSA must respond to requests to consider actual expenses.

Response: The specific procedures and timeline for determining higher than average IRWE and BWE expenses will not be addressed in the regulations. These are operational issues and not appropriate to include in regulations. However, § 418.3325 clearly states that we will exclude greater than average IRWE or BWE expenses when the individual's actual IRWE or BWE expenses are greater than the average. The notices that we send to beneficiaries will state how much income we are counting and how much income is excluded because of IRWE or BWE. The notices will inform the beneficiaries to contact us if they disagree with our income determination. If a beneficiary contacts us with a question about the IRWE or BWE exclusion amount, we will help the individual to establish the actual amount of IRWE or BWE expenses that should be excluded.

Comment: Four commenters who approved of our decision to use the average percentage for computing IRWE encouraged us to make the process of proving higher than average IRWE as easy for beneficiaries as possible. One of these four commenters recommended that we permit self-attestation of higher IRWE to make the process simpler for beneficiaries and for us.

Response: We agree with the commenter that the process for proving higher than average IRWE and BWE should be as easy as possible for beneficiaries. However, we do not believe a change in the regulation is necessary. The procedures we have developed are based on the recognition that determining dollar amounts for IRWE or BWE can be difficult because of the wide variety of expenses that potentially qualify for this exclusion. Therefore, under our procedures our staff will assist beneficiaries establish a higher than average IRWE or BWE exclusion and in obtaining any documentation that might be required to establish a higher than average IRWE or BWE exclusion. We will issue operating

instructions explaining these procedures.

Comment: One commenter recommended that income deductions should be afforded to individuals who use service dogs or guide dogs and incur expenses related to use of these dogs.

Response: The procedures for determining the exclusion of expenses associated with service dogs or guide dogs are provided in our operating instructions and will not be addressed in these regulations. Our procedures exclude expenses associated with service dogs and guide dogs and all associated expenses under either the IRWE or BWE exclusion if the dogs are needed for employment-related activity. To make it clear that BWE exclusions such as guide dogs also apply to subsidy determinations, we are adding a cross-reference in § 418.3325(b)(7) that refers to the SSI BWE provision in § 416.1112(c)(8) of our rules.

Comment: One commenter recommended that we clarify the regulations by stating that cost-of-living increases in Federal benefits are not counted as income until the month following the annual publication of the updated Federal poverty guidelines.

Response: We have clarified § 418.3340(f) of the final rules to state that we will not count the amount of the cost-of-living adjustment (COLA) for Social Security benefits for any month before the Federal poverty guidelines are published. Section 1905(p)(2)(D)(i) of the Act provides that the income of an individual who is entitled to monthly insurance benefits under title II shall not include any amounts attributable to a COLA for each month through the month following the month in which the annual revision of the Federal poverty guidelines are published. However, the statutory authority to not count the COLA applies only to monthly insurance benefits under title II and not to other Federal benefits. Therefore, we have also revised § 418.3120(a)(7) for consistency.

Resources

Comment: One commenter stated that our description in § 418.3405 of liquid resources as those which can be converted to cash within 20 workdays is ambiguous. The commenter stated that § 418.3405 of the rules should include a finite list of the resources that will be counted and a statement that anything not listed will not be counted.

Response: The purpose of § 418.3405 is to describe the types of financial accounts and instruments that will be counted as resources. Liquid resources are resources that are held in financial accounts or other instruments that can be converted to cash within 20 workdays. We will presume that these types of resources can be converted to cash within 20 workdays and are countable. However, if the individual establishes that a particular resource (other than nonhome real property) cannot be converted to cash within 20 workdays, we will not count it as a resource in the subsidy determination. We refer to ''liquid resources'' in order to differentiate them from ''non-liquid'' resources which, except for equity in nonhome real property, will not be counted for purposes of determining subsidy eligibility (*e.g.*, vehicles, household goods, jewelry, musical instruments, etc.). We are adding language to § 418.3405 to clarify that ''20 days'' means ''20 workdays.'' This is how we described this rule in the preamble of the Notice of Proposed Rulemaking (NPRM) and it was an unintended omission that we did not say ''workdays'' in § 418.3405 in the NPRM.

Based on over 30 years of experience making resource determinations for the SSI program, we are convinced that it is not feasible for us, or beneficial to the individual, to provide a finite list of all countable resources. A list could be developed to include most of the common types of financial instruments, but it would not capture all of the many types of financial instruments in existence now. In addition, new types of financial instruments and investment vehicles are being created regularly and often are given names in order to differentiate them from existing products. It would be very difficult to maintain such a list in our regulations. Using a list could also result in unequal treatment of beneficiaries because we would exclude from resource counting some financial products just because they are not on the list even if they are very similar to financial products on the list that are countable.

To further improve the clarity of what resources are generally considered liquid, we will add the following examples to the list of resources that are ordinarily considered liquid, ''trusts if they are revocable or if the trust beneficiary can direct the use of the funds in the trust.'' We consider a revocable trust to be a liquid resource because it can be converted to cash. Also, if a trust beneficiary can direct the use of the funds in a trust, the funds in the trust are a liquid resource because the beneficiary can use those funds for support and maintenance.

Comment: Two commenters recommended that the cash value of life insurance should not count as a resource because life insurance policies may not be easily convertible to cash and therefore would not meet the definition of liquid assets adopted by CMS in 42 CFR 423.772 which states that liquid resources are resources that can be converted to cash in 20 workdays. The commenters also expressed concern that determining the cash value of life insurance could be difficult for beneficiaries and would slow down the application process and could result in some beneficiaries not filing for the subsidy.

Response: After careful consideration, we decided not to adopt this recommended change. As already discussed in this document, we will presume that a financial instrument such as a life insurance policy can be converted to cash within 20 workdays. If the individual establishes that a particular resource (other than nonhome real property) cannot be converted to cash within 20 workdays, it will not be counted as a resource. Normally, information about the cash value of an insurance policy is readily available to the policy owner, and we have procedures to assist beneficiaries who need help determining the value of their insurance policies.

Comment: One commenter expressed concern that the requirement to provide the cash value of life insurance policies would be a significant burden on beneficiaries. The commenter recommended that SSA should work with insurance companies and organizations to develop a process to help beneficiaries get this information quickly and accurately.

Response: We agree with the commenter that it is important to establish procedures that are not burdensome for beneficiaries. The procedure we have developed provides a flexible approach for beneficiaries to make it as simple as possible to provide us with the correct information. We have issued operating instructions explaining these procedures. In addition, our staff will assist beneficiaries who find it difficult to provide this information. We have also held discussions with representatives of the American Council of Life Insurers and the National Association of Insurance Commissioners to ask for their assistance in notifying insurers about the kind of information we need about an individual's policies and how they can help their clients.

Comment: One commenter recommended that we automatically exclude $1,500 in assets for all beneficiaries under the burial exclusion in § 418.3425(j). The commenter expressed concern that some beneficiaries could be disadvantaged if

they did not understand the burial exclusion question and answered it incorrectly.

Response: After careful consideration, we decided not to adopt this recommended change. The $1,500 burial fund exclusion is based on the $1,500 SSI burial fund exclusion in section 1613(d)(1) of the Act. This section creates this exclusion, sets the $1,500 limit, and establishes the requirement that the individual must expect to use a portion of his or her money for burial and related expenses of the individual or spouse. The statute does not permit the $1,500 burial exclusion for an individual who does not expect any of his or her money to be used for burial expenses.

Comment: Two commenters recommended that pre-paid burial contracts should be excluded from determinations of resources because such contracts should not be considered liquid resources due to the difficulty in converting them to cash. One of the two commenters also recommended that irrevocable burial trusts should also be excluded for the same reason and that the regulations should provide an explicit statement that these burial arrangements are not counted as resources.

Response: Although we did not specifically mention prepaid burial contracts and burial trusts in this regulation, irrevocable burial contracts and irrevocable burial trusts will not be considered as countable resources for purposes of determining eligibility for the subsidy. With the exception of equity in nonhome real property, we count only liquid resources for purposes of subsidy eligibility. We have revised § 418.3425(b) to clarify that irrevocable burial trusts and the irrevocable portion of prepaid burial contracts will not be counted as resources.

Comment: One commenter pointed out that § 418.3425(j) provides for a $1,500 exclusion of funds being saved explicitly for burial expense but does not incorporate by reference the SSI burial fund exclusion in § 416.1231(b) of our rules. Section 416.1231(b) of our rules describes the types of funds covered under this exclusion for SSI purposes as well as exceptions to the amount of excluded burial funds. Because § 418.3425(j) does not incorporate § 416.1231(b) of our rules by reference, the commenter recommends that our operating instructions should discuss the types of resources that will be considered excludable as burial funds and any applicable reductions to the excluded amount of burial funds.

Response: We did not incorporate § 416.1231(b) of our rules by reference because the $1,500 burial exclusion applicable for SSI resource determinations is different from the $1,500 burial exclusion applicable to subsidy determinations. Our operating instructions make it clear that for purposes of determining subsidy eligibility, the $1,500 burial fund exclusion is applied to any of a beneficiary's countable liquid resources if the beneficiary states that he or she expects that some of the money will be used for burial expenses. Our operating instructions also make it clear that this $1,500 exclusion, unlike the SSI burial fund exclusion, is not reduced by the value of other burial arrangements that the beneficiary may have such as life insurance, a prepaid burial contract, or a burial trust. We believe that this approach is consistent with Congressional intent that we simplify the subsidy program. However, as explained earlier we will count revocable burial contracts and revocable burial trusts as resources.

Determinations and the Administrative Review Process

Comment: Three commenters asked that we allow reopening of our decision, after an initial determination has been made and an appeal has been filed when the applicant uncovers new information.

Response: When we receive information after an appeal has been filed that would result in a favorable appeal determination, we will make our determination using the new information received while the appeal is pending. Also, if we discover clerical errors within 60 days after we have made an initial determination or decision, we will correct those errors and send notice of our revised determination with appeal rights to a hearing. We have added a new section to these rules at § 418.3678 to clarify this.

Comment: Seven commenters suggested adding another administrative level of appeal in addition to the hearing, and revising the hearing process to allow the individual with the option of having a face-to-face, videoconference, or telephone hearing. They also recommended that the regulations specify that TDD/TTY facilities are available if needed. The commenters voiced concern that we were not providing adequate due process to this low-income population by providing one level of appeal, i.e., a hearing by either telephone or case review, as some of these individuals cannot afford to file a civil action in Federal district court.

Response: Section 1860D–14 authorizes us to establish procedures for appeals of subsidy determinations that are similar to the specified SSI appeal procedures, but not identical. The issues arising in a claim for a subsidy do not involve the types of complicated medical or vocational issues, or issues involving credibility, that are involved in claims for SSI disability benefits. The issues involved in subsidy hearings can be readily resolved with a case review or a hearing by telephone.

Generally, the issues in a subsidy appeal are the amount of an individual's income and resources, living arrangements, and marital status. We have developed a simplified application and appeals process in keeping with the intent of Congress expressed in the language of the MMA. We disagree with the commenters' contention that these rules do not provide individuals with adequate due process. In fact, the appeals process affords the individual with similar due process rights that are provided under the SSI program, including reasonable notice and opportunity to request and be provided with a review of our determination, the opportunity to examine information and submit new information, and the right to present witnesses before we make a decision on appeal. Verification of information will consist of a comparison of claimant-provided information to data obtained from other Federal agencies. We should be able to resolve most issues or discrepancies by a telephone call. In addition, individuals who appear to be ineligible for a subsidy will receive a pre-decisional notice that gives them an opportunity to rebut any issues explained in our notice prior to our issuing the initial determination on the application. Those who do not provide information or provide information that does not change the determination will then receive another notice explaining our initial determination and their appeal rights.

We believe that the subsidy hearing provides a simple appeals process that ensures subsidy applicants receive decisions quickly. It also provides an opportunity for a personal contact with the hearing decision-maker who is reviewing the initial determination on the subsidy claim and making the appeal decision. A hearing by telephone does not require activities such as travel to a hearing, and thus gives the individual quick and easy access, generally in his or her own home, to the appeal decision-maker. Consequently, the appeals process established in these rules provides an efficient and effective means for discussing the issues in question. We plan to provide

individuals who are hearing-impaired or non-English speaking the special accommodations they need.

Comment: Five commenters requested that when an individual requests an appeal of a subsidy initial determination we provide a hearing before an independent, impartial, and qualified third party who is not employed by the agency making the initial determination, preferably an administrative law judge (ALJ).

Response: The hearing decisions will be made by qualified and impartial specialists who have had no involvement in the initial determination. These specially-trained hearing decision-makers are looking at factual information, i.e., income and resources, living arrangements, family size, and marital status in making a decision. They are well-trained in the policies and procedures relating to the eligibility requirements of the Part D subsidy program and administrative review process. To ensure compliance and consistency with our policies, their telephone interviews will be monitored and a sample of their hearing decisions reviewed. We anticipate that our quality assurance efforts will lead to expeditious and accurate decisions for these subsidy applicants.

Comment: One commenter asked that we specify whether the case review is a *de novo* determination or a strictly appellate review. A *de novo* case review would require evaluation of the relevant claims file evidence along with applicable law. A strictly appellate review accepts the initial decision's factual determinations, and then focuses on whether or not the adjudicator properly applied relevant law to those facts.

Response: The decision made on appeal will be a *de novo* review. This is consistent with the policies we apply in the SSI program. The operating procedures as well as the regulations require that the appeal decision-maker must review all facts in the case including those that were used in making the initial determination in addition to the information received subsequent to the initial determination.

Comment: Eight commenters have asked that the regulations specify a time frame for rendering a decision after an appeal has been requested.

Response: Our goal is to implement an appeals process that is similar to the current SSI hearing process, but which minimizes processing time frames and ensures the individual will have our final decision on his or her subsidy claim in an expeditious manner.

Comment: One commenter voiced concern over the lack of aid pending the outcome of an appeal.

Response: The MMA legislation did not authorize us to provide a subsidy for applicants awaiting the outcome of the appeal on his or her subsidy application. However, once we find the individual to be eligible for a subsidy, if the requirements explained in our regulations are met, he or she will be entitled to receive his or her subsidy until the appeal of our determination to reduce the subsidy or to terminate eligibility for a subsidy is decided.

Comment: Five commenters voiced concern over the lack of standards for the hearing appeal decision-maker to use in making a decision.

Response: We believe that these rules and our operating instructions contain the standards for our decision-makers. Our primary role is to determine the individual's resources and his or her income in relation to the poverty level for the family of the size involved and whether or not the individual will be eligible for a full or partial subsidy. The hearing decision-makers are specialists trained in the policies and procedures relating to the eligibility requirements of the Part D subsidy program and administrative review process. As we noted previously, to ensure compliance, the hearing decision process for the subsidy program will be evaluated continuously. We anticipate that our policies and procedures will lead to expeditious and accurate decisions.

Comment: One commenter believes there are a number of areas in which the administrative review process is deficient, i.e., a telephone rather than an in-person hearing; lack of impartial, independent and qualified decision-maker, such as an ALJ; only one level of administrative review; process not commensurate with the right to judicial review; process not similar to title XVI; does not meet requirements of due process under the Fifth Amendment. In addition, the commenter expressed concern about whether SSA has tested the concept of telephone hearings for millions of low-income individuals; how the appeal decision-maker will determine that the person participating in the telephone hearing is the applicant; how the appeal decision-maker will corroborate the identity of witnesses and make determinations of witness credibility over the phone; how an individual will judge whether the appeal decision-maker is prejudiced or partial; and what constitutes the record that is subject to review in the Federal district court.

Response: We believe that we have already addressed some of the concerns of this commenter in our responses to prior comments. The MMA requires the Commissioner to establish appeal procedures for Part D subsidy determinations which are similar to the procedures in section 1631(c)(1)(A) of the Act. While section 1631(c)(1)(A) provides a statutory right to a hearing, it does not require a hearing before an ALJ. Our decision not to use ALJs for this workload is based on our conclusion that the specially-trained paralegal professionals making the hearing decisions are capable of making findings of fact which are involved in making a subsidy eligibility decision. Because the hearing decision-makers are SSA employees, as are the ALJs, they are bound by the Agency's policies and procedures in making a subsidy decision. Moreover, their actions and decisions will be monitored and evaluated.

As we have stated in our response to prior comments, the subsidy determination hearing process conforms to the MMA legislation and the requirements of section 1631(c)(1)(A) of the Act. It provides all the due process rights afforded individuals under the current insurance programs, i.e., proper notice, right to a hearing, right to review and right to submit information used in the decision, and right to present and question witnesses. Further, we believe that we are implementing a process that replicates the current procedures when a civil action is filed, and we have prepared instructions concerning how a case should be documented and prepared for judicial review. We will perform an ongoing evaluation of these court procedures, and plan to make adjustments that are found to be necessary.

The remaining comments on client identification verification, testing, and determining prejudicial decision-makers will be addressed in operating instructions as well. We are using SSA's current process for verifying the identity of the individual with whom we are conducting business. Furthermore, we will review our operating instructions and determine whether further guidance should be considered on these matters. Again, the evaluation of SSA's administrative review policies and procedures and the functions of the hearing decision-makers will be an ongoing initiative and adjustments will be made accordingly.

Other Changes

In addition to any changes already discussed, we have made a few other non-substantive editorial corrections.

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 by Executive Order 13258. Thus, they were reviewed by OMB. Any effect on the economy is attributable to the legislation, not to these final rules. For an analysis of the economic impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4454 through 4524.

We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

In addition, we find good cause for dispensing with the 30-day effective date of a substantive rule, as provided for by 5 U.S.C. 553(d)(3). The MMA establishes the Part D prescription drug program effective January 1, 2006. Starting in May 2005, we began to mail out paper applications with a cover letter and a postage-paid business reply envelope to low-income Medicare beneficiaries who appear eligible for the subsidy based on financial data available to us. The mailing continued through August 2005. In addition, beginning July 1, 2005, individuals could apply online on our Web site (Social Security Online) for a subsidy. In light of the effective date of this program and our obligation to process the subsidy applications, we find it is in the public interest to make these rules effective upon publication.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required. However, for an analysis of the economic impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4454 through 4524.

Federalism Impact and Unfunded Mandates Impact

We have reviewed these final rules under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. These final rules do not affect the roles of the State, local, or tribal governments but rather, offer an option as intended by the legislation, i.e., whether to apply for a subsidy to SSA or to the States. For an analysis of the Federalism and Unfunded Mandates impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4454 through 4524.

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 §§ 418.3120 through 418.3670 of these final rules. The OMB Control Number for these collections is 0960–0702, expiring May 31, 2008.

(Catalog of Federal Domestic Assistance Program Nos. 93.773, Medicare—Hospital Insurance and 93.774, Medicare—Supplementary Medical Insurance Program)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: November 18, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new part 418 to chapter III of title 20 of the Code of Federal Regulations as follows:

PART 418—MEDICARE SUBSIDIES

Subparts A–C—[Reserved]

Subpart D—Medicare Part D Subsidies

Introduction, General Provisions and Definitions

Sec.

418.3001 What is this subpart about?
418.3005 Purpose and administration of the program.
418.3010 Definitions.

Eligibility for a Medicare Prescription Drug Subsidy

418.3101 How do you become eligible for a subsidy?
418.3105 Who does not need to file an application for a subsidy?
418.3110 What happens when you apply for a subsidy?
418.3115 What events will make you ineligible for a subsidy?
418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?
418.3123 When is a change in your subsidy effective?
418.3125 What are redeterminations?

Filing of Application

418.3201 Must you file an application to become eligible for a subsidy?
418.3205 What makes an application a claim for a subsidy?
418.3210 What is a prescribed application for a subsidy?
418.3215 Who may file your application for a subsidy?
418.3220 When is your application considered filed?
418.3225 How long will your application remain in effect?
418.3230 When will we use your subsidy inquiry as your filing date?

Income

418.3301 What is income?
418.3305 What is not income?
418.3310 Whose income do we count?
418.3315 What is earned income?
418.3320 How do we count your earned income?
418.3325 What earned income do we not count?
418.3330 What is unearned income?
418.3335 What types of unearned income do we count?
418.3340 How do we count your unearned income?
418.3345 How do we determine the value of in-kind support and maintenance?
418.3350 What types of unearned income do we not count?

Resources

418.3401 What are resources?
418.3405 What types of resources do we count?
418.3410 Whose resources do we count?
418.3415 How do we determine countable resources?
418.3420 How are funds held in financial institution accounts counted?
418.3425 What resources do we exclude from counting?

Adjustments and Terminations

418.3501 What could cause us to increase or reduce your subsidy or terminate your subsidy eligibility?
418.3505 How would an increase, reduction or termination affect you?
418.3510 When would an increase, reduction or termination start?
418.3515 How could you qualify for a subsidy again?

Determinations and the Administrative Review Process

418.3601 When do you have the right to administrative review?
418.3605 What is an initial determination?
418.3610 Is there administrative or judicial review for administrative actions that are not initial determinations?

418.3615 Will we mail you a notice of the initial determination?
418.3620 What is the effect of an initial determination?
418.3625 What is the process for administrative review?
418.3630 How do you request administrative review?
418.3635 Can anyone request administrative review on your behalf?
418.3640 How do we determine if you had good cause for missing the deadline to request administrative review?
418.3645 Can you request that the decision-maker be disqualified?
418.3650 How do we make our decision upon review?
418.3655 How will we notify you of our decision after our review?
418.3665 Can your request for a hearing or case review be dismissed?
418.3670 How will you be notified of the dismissal?
418.3675 How does our decision affect you?
418.3678 What is the process for correcting Agency clerical errors?
418.3680 What happens if your case is remanded by a Federal court?

Subparts A–C—[Reserved]

Subpart D—Medicare Part D Subsidies

Authority: Secs. 702(a)(5) and 1860D–1, 1860D–14 and –15 of the Social Security Act (42 U.S.C. 902(a)(5),1395w–101, 1395w–114, and –115).

Introduction, General Provisions, and Definitions

§ 418.3001 What is this subpart about?

This subpart D relates to sections 1860D–1 through 1860D–24 of title XVIII of the Social Security Act (the Act) as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). Sections 1860D–1 through 1860D–24 established Part D of title XVIII of the Act to create a Medicare program known as the Voluntary Prescription Drug Benefit Program. Section 1860D–14, codified into the Act by section 101, includes a provision for subsidies of prescription drug premiums and of Part D cost-sharing requirements for Medicare beneficiaries whose income and resources do not exceed certain levels. The regulations in this subpart explain how we decide whether you are eligible for a Part D premium subsidy as defined in 42 CFR 423.780 and cost-sharing subsidy as defined in 42 CFR 423.782. The rules are divided into the following groups of sections according to subject content:

(a) Sections 418.3001 through 418.3010 contain the introduction, a statement of the general purpose underlying the subsidy program for the Voluntary Prescription Drug Benefit Program under Medicare Part D, general provisions that apply to the subsidy program, a description of how we administer the program, and definitions of terms that we use in this subpart.

(b) Sections 418.3101 through 418.3125 contain the general requirements that you must meet in order to be eligible for a subsidy. These sections set forth the subsidy eligibility requirements of being a Medicare beneficiary, of having income and resources below certain levels, and of filing an application. These sections also explain when we will redetermine your eligibility for a subsidy and the period covered by a redetermination.

(c) Sections 418.3201 through 418.3230 contain the rules that relate to the filing of subsidy applications.

(d) Sections 418.3301 through 418.3350 contain the rules that explain how we consider your income (and your spouse's income, if applicable) and define what income we count when we decide whether you are eligible for a subsidy.

(e) Sections 418.3401 through 418.3425 contain the rules that explain how we consider your resources (and your spouse's resources, if applicable) and define what resources we count when we decide whether you are eligible for a subsidy.

(f) Sections 418.3501 through 418.3515 contain the rules that explain when we will adjust or when we will terminate your eligibility for a subsidy.

(g) Sections 418.3601 through 418.3680 contain the rules that we apply when you appeal our determination regarding your subsidy eligibility or our determination of whether you should receive a full or partial subsidy. They also contain the rules that explain that our decision is binding unless you file an action in Federal district court seeking review of our final decision and what happens if your case is remanded by a Federal court

§ 418.3005 Purpose and administration of the program.

The purpose of the subsidy program is to offer help with the costs of prescription drug coverage for individuals who meet certain income and resources requirements under the law as explained in this subpart. The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services has responsibility for administration of the Medicare program, including the new Medicare Part D Voluntary Prescription Drug Benefit Program. We notify Medicare beneficiaries who appear to have limited income, based on our records, about the availability of the subsidy if they are not already eligible for this help, and take applications for and determine the eligibility of individuals for a subsidy.

§ 418.3010 Definitions.

(a) *Terms relating to the Act and regulations.*

(1) *CMS* means the Centers for Medicare & Medicaid Services in the Department of Health and Human Services.

(2) *Commissioner* means the Commissioner of Social Security.

(3) *Section* means a section of the regulations in part 418 of this chapter unless the context indicates otherwise.

(4) *The Act* means the Social Security Act, as amended.

(5) *Title* means a title of the Act.

(6) *We*, *our* or *us* means the Social Security Administration (SSA).

(b) *Miscellaneous.*

(1) *Claimant* means the person who files an application for himself or herself or the person on whose behalf an application is filed.

(2) *Date you receive a notice* means 5 calendar days after the date on the notice, unless you show us you did not receive it within the 5-day period.

(3) *Decision* means the decision we make after a hearing.

(4) *Determination* means the initial determination that we make as defined in § 418.3605.

(5) *Family size*, for purposes of this subpart, means family size as defined in 42 CFR 423.772.

(6) *Federal poverty line*, for purposes of this subpart, has the same meaning as Federal poverty line in 42 CFR 423.772.

(7) *Full-benefit dual eligible individual* for purposes of this subpart, has the same meaning as full-benefit dual eligible individual in 42 CFR 423.772.

(8) *Medicare beneficiary* means an individual who is entitled to or enrolled in Medicare Part A (Hospital Insurance) or enrolled in Part B (Supplementary Medical Insurance) or both under title XVIII of the Act.

(9) *Periods of limitations ending on Federal non-workdays* Title XVIII of the Act and regulations in this subpart require you to take certain actions within specified time periods or you may lose your right to a portion of or your entire subsidy. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

(10) *Representative* or *personal representative* means a personal

representative as defined in 42 CFR 423.772.

(11) *State,* unless otherwise indicated, means:

(i) A State of the United States; or

(ii) The District of Columbia.

(12) *Subsidy eligible individual,* for purposes of this subpart, has the same meaning as subsidy eligible individual as defined in 42 CFR 423.773.

(13) *Subsidy* means an amount CMS will pay on behalf of Medicare beneficiaries who are eligible for a subsidy of their Medicare Part D costs. The amount of a subsidy for a Medicare beneficiary depends on the beneficiary's income as related to household size, resources, and late enrollment penalties (if any) as explained in 42 CFR 423.780 and 42 CFR 423.782. We do not determine the amount of the subsidy, only whether or not the individual is eligible for a full or partial subsidy.

(14) *United States* when used in a geographical sense means:

(i) The 50 States; and

(ii) The District of Columbia

(1) *You* or *your* means the person who applies for the subsidy, the person for whom an application is filed or anyone who may consider applying for a subsidy.

Eligibility for a Medicare Prescription Drug Subsidy

§ 418.3101 How do you become eligible for a subsidy?

Unless you are deemed eligible as explained in § 418.3105 and 42 CFR 423.773(c), you are eligible for a Medicare Part D prescription drug subsidy if you meet all of the following requirements:

(a) You are entitled to or enrolled in Medicare Part A (Hospital Insurance) or enrolled in Medicare Part B (Supplementary Medical Insurance) or both under title XVIII of the Act.

(b) You are enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage. We can also determine your eligibility for a subsidy before you enroll in one of the above programs. However, as explained in § 418.3225(b), if we determine that you would be eligible for a subsidy before you have enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage, you must enroll in one of these plans to actually receive a subsidy.

(c) You reside in the United States as defined in § 418.3010.

(d) You (and your spouse, if applicable) meet the income requirements as explained in §§ 418.3301 through 418.3350 and 42 CFR 423.773.

(e) You (and your spouse, if applicable) meet the resources requirements as explained in §§ 418.3401 through 418.3425 and 42 CFR 423.773.

(f) You or your personal representative file an application for a subsidy as explained in §§ 418.3201 through 418.3230.

§ 418.3105 Who does not need to file an application for a subsidy?

Regulations in 42 CFR 423.773(c) explain who is deemed eligible and does not need to file an application for a subsidy to be eligible for this assistance. Full-benefit dual eligible beneficiaries are in this category. If beneficiaries have deemed eligibility status because they receive Medicaid coverage, are enrolled in a Medicare Savings Program within their State, or receive SSI and have Medicare, then their subsidy is effective with the first month they have deemed eligibility status.

§ 418.3110 What happens when you apply for a subsidy?

(a) When you or your personal representative apply for a subsidy, we will ask for information that we need to determine if you meet all the requirements for a subsidy. You must give us complete information. If, based on the information you present to us, you do not meet all the requirements for eligibility listed in § 418.3101, or if one of the events listed in § 418.3115 exists, or you fail to submit information we request, we will deny your claim.

(b) If you meet all the requirements for eligibility listed in § 418.3101, or you meet all the requirements except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice telling you the following:

(1) You are eligible for a full or partial subsidy for a period not to exceed 1 year;

(2) What information we used to make this determination including how we calculated your income and resources;

(3) What you may do if your circumstances change as described in § 418.3120; and

(4) Your appeal rights.

(c) If you are not already enrolled with a Medicare prescription drug plan or a Medicare Advantage plan with prescription drug coverage, you must enroll in order to receive your subsidy.

(d) If you do not meet all the requirements for eligibility listed in § 418.3101 or if § 418.3115 applies to you except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage as described in § 418.3225, we will send you a notice telling you the following:

(1) You are not eligible for a subsidy;

(2) The information we used to make this determination including how we calculated your income or resources;

(3) You may reapply if your situation changes; and

(4) Your appeal rights.

§ 418.3115 What events will make you ineligible for a subsidy?

Generally, even if you meet the other requirements in §§ 418.3101 through 418.3125, we will deny your claim or you will lose your subsidy if any of the following apply to you:

(a) You lose entitlement to or are not enrolled in Medicare Part A and are not enrolled in Medicare Part B.

(b) You do not enroll or lose your enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage.

(c) You do not give us information we need to determine your eligibility and if eligible, whether you should receive a full or partial subsidy; or you do not give us information we need to determine whether you continue to be eligible for a subsidy and if eligible, whether you should receive a full or partial subsidy.

(d) You knowingly give us false or misleading information.

§ 418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?

(a) After we determine that you are eligible for a subsidy, your subsidy eligibility could change if:

(1) You marry.

(2) You and your spouse, who lives with you, divorce.

(3) Your spouse, who lives with you, dies.

(4) You and your spouse separate (i.e., you or your spouse move out of the household and you are no longer living with your spouse) unless the separation is a temporary absence as described in § 404.347 of this chapter.

(5) You and your spouse resume living together after having been separated.

(6) You and your spouse, who lives with you, have your marriage annulled.

(7) You (or your spouse, who lives with you, if applicable) expect your estimated annual income to increase or decrease in the next calendar year.

(8) You (or your spouse, who lives with you, if applicable) expect your resources to increase or decrease in the next calendar year.

(9) Your family size as defined in 42 CFR 423.772 has changed or will change

(other than a change resulting from one of the events in paragraphs (a)(1) through (6) of this section).

(10) You become eligible for one of the programs listed in 42 CFR 423.773(c).

(b)(1) When you report one of the events listed in paragraphs (a)(1) through (a)(6) of this section, or we receive such a report from another source (e.g., a data exchange of reports of death), we will send you a redetermination form upon receipt of the report. You must return the completed form within 90 days of the date of the form.

(2) When you report one of the events listed in paragraphs (a)(7) through (a)(9) of this section or we receive such a report from another source (e.g., a data exchange involving income records), we will send you a redetermination form between August and December to evaluate the change. You must return the completed form to us within 30 days of the date of the form.

(3) If we increase, decrease, or terminate your subsidy as a result of the redetermination, we will send you a notice telling you:

(i) Whether you can receive a full or partial subsidy as described in 42 CFR 423.780 and 423.782.

(ii) How we calculated your income and resources;

(iii) When the change in your subsidy is effective;

(iv) Your appeal rights;

(v) What to do if your situation changes.

(c) If you become eligible for one of the programs listed in 42 CFR 423.773(c), CMS will notify you of any change in your subsidy.

§ 418.3123 When is a change in your subsidy effective?

(a) If we redetermine your subsidy as described in § 418.3120(b)(1), any change in your subsidy will be effective the month following the month of your report.

(b) If we redetermine your subsidy as described in § 418.3120(b)(2), any change in your subsidy will be effective in January of the next year.

(c) If you do not return the redetermination form described in § 418.3120(b)(1), we will terminate your subsidy effective with the month following the expiration of the 90-day period described in § 418.3120(b)(1).

(d) If you do not return the redetermination forms described in § 418.3120(b)(2), we will terminate your subsidy effective in January of the next year.

§ 418.3125 What are redeterminations?

(a) *Redeterminations defined.* A redetermination is a periodic review of your eligibility to make sure that you are still eligible for a subsidy and if so, to determine whether you should continue to receive a full or partial subsidy. This review deals with evaluating your income and resources (and those of your spouse, who lives with you) and will not affect past months of eligibility. It will be used to determine your future subsidy eligibility and whether you should receive a full or partial subsidy for future months. We will redetermine your eligibility if we made the initial determination of your eligibility or if you are deemed eligible because you receive SSI benefits. Rules regarding redeterminations of initial eligibility determinations made by a State are described in 42 CFR 423.774.

(b) *When we make redeterminations.* (1) We will redetermine your subsidy eligibility within one year after we determine that you are eligible for the subsidy.

(2) After the first redetermination, we will redetermine your subsidy eligibility at intervals determined by the Commissioner. The length of time between redeterminations varies depending on the likelihood that your situation may change in a way that affects your eligibility and whether you should receive a full or partial subsidy.

(3) We may also redetermine your eligibility and whether you should receive a full or partial subsidy when you tell us of a change in your circumstances described in § 418.3120.

(4) We may redetermine your eligibility when we receive information from you or from data exchanges with Federal and State agencies that may affect whether you should receive a full or partial subsidy or your eligibility for the subsidy.

(5) We will also redetermine eligibility on a random sample of cases for quality assurance purposes. For each collection of sample cases, all factors affecting eligibility and/or whether you should receive a full or partial subsidy may be verified by contact with primary repositories of information relevant to each individual factor (e.g., we may contact employers to verify wage information). Consequently, we may contact a variety of other sources, in addition to recontacting you, to verify the completeness and accuracy of our information.

Filing of Application

§ 418.3201 Must you file an application to become eligible for a subsidy?

Unless you are a person covered by § 418.3105, in addition to meeting other requirements, you or your personal representative must file an application to become eligible for a subsidy. If you believe you may be eligible for a subsidy, you should file an application. Filing a subsidy application does not commit you to participate in the Part D program. Filing an application will:

(a) Permit us to make a formal determination on your eligibility for the subsidy and whether you should receive a full or partial subsidy;

(b) Assure that you can receive the subsidy for any months that you are eligible and are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage; and

(c) Give you the right to appeal if you disagree with our determination.

§ 418.3205 What makes an application a claim for a subsidy?

We will consider your application a claim for the subsidy if:

(a) You, or someone acting on your behalf as described in § 418.3215, complete an application on a form prescribed by us;

(b) You, or someone acting on your behalf as described in § 418.3215, file the application with us pursuant to § 418.3220; and

(c) You are alive on the first day of the month in which the application is filed.

§ 418.3210 What is a prescribed application for a subsidy?

If you choose to apply with SSA, you must file for the subsidy on an application prescribed by us. A prescribed application may include a printed form, an application our employees complete on computer screens, or an application available online on our Internet Web site (*www.socialsecurity.gov*). See § 418.3220 for places where an application for the subsidy may be filed and when it is considered filed.

§ 418.3215 Who may file your application for a subsidy?

You or your personal representative (as defined in 42 CFR 423.772) may complete and file your subsidy application.

§ 418.3220 When is your application considered filed?

(a) *General rule.* We consider an application for a subsidy as described in § 418.3210 to be filed with us on the day it is received by either one of our employees at one of our offices or by one of our employees who is authorized to receive it at a place other than one of our offices or it is considered filed on the day it is submitted electronically through our Internet Web site. If a State Medicaid agency forwards to us a

subsidy application that you gave to it, we will consider the date you submitted that application to the State Medicaid agency as the filing date. (See 42 CFR 423.774 for applications filed with a State Medicaid agency.)

(b) *Exceptions.* (1) When we receive an application that is mailed, we will assume that we received it 5 days earlier (unless you can show us that you did not receive it within the 5 days) and use the earlier date as the application filing date if it would result in another month of subsidy eligibility.

(2) We may consider an application to be filed on the date a written or oral inquiry about your subsidy eligibility is made, or the date we receive a partially completed Internet subsidy application from our Internet Web site where the requirements set forth in § 418.3230 are met.

§ 418.3225 How long will your application remain in effect?

(a) Your application will remain in effect until our determination or decision has become final and binding under § 418.3620. If you appeal our initial determination, the determination does not become final until we issue a decision on any appeal you have filed under § 418.3655 (see § 418.3675) or dismiss the request for a hearing under § 418.3670.

(b) If, at the time your application is filed or before our determination or decision becomes final and binding, you meet all the requirements for a subsidy as described in 42 CFR 423.773 except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice advising you of your eligibility for the subsidy and the requirement to enroll in such a plan.

(c) If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B at the time your subsidy application is filed but you appear to be in an enrollment period, we will send you a notice advising you that we will not make a determination on your application until you become entitled to Medicare Part A and/or enrolled in Medicare Part B. If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B at the time your application is filed and you do not appear to be in an enrollment period, we will send you a notice advising you that you are not eligible for the subsidy because you are not entitled to Medicare Part A and/or enrolled in Medicare Part B and explain your appeal rights.

§ 418.3230 When will we use your subsidy inquiry as your filing date?

If you or your personal representative (as defined in 42 CFR 423.772) make an oral or written inquiry about the subsidy, or partially complete an Internet subsidy application on our Web site, we will use the date of the inquiry or the date the partial Internet application was started as your filing date if the following requirements are met:

(a) The written or oral inquiry indicates your intent to file for the subsidy, or you submit a partially completed Internet application to us;

(b) The inquiry, whether in person, by telephone, or in writing, is directed to an office or an official described in § 418.3220, or a partially completed Internet subsidy application is received by us;

(c) You or your personal representative (as defined in 42 CFR 423.772) file an application (as defined in § 418.3210) within 60 days after the date of the notice we will send in response to the inquiry. The notice will say that we will make an initial determination of your eligibility for a subsidy, if an application is filed within 60 days after the date of the notice. We will send the notice to you. Where you are a minor or adjudged legally incompetent and your personal representative made the inquiry, we will send the notice to your personal representative; and

(d) You are alive on the first day of the month in which the application is filed.

Income

§ 418.3301 What is income?

Income is anything you and your spouse, who lives with you, receive in cash or in-kind that you can use to meet your needs for food and shelter. Income can be earned income or unearned income.

§ 418.3305 What is not income?

Some things you receive are not considered income because you cannot use them to meet your needs for food or shelter. The things that are not income for purposes of determining eligibility and whether you should receive a full or partial subsidy are described in § 416.1103 of this chapter.

§ 418.3310 Whose income do we count?

(a) We count your income. If you are married and live with your spouse in the month you file for a subsidy, or when we redetermine your eligibility for a subsidy as described in § 418.3125, we count your income and your spouse's income regardless of whether one or both of you apply or are eligible for the subsidy.

(b) We will determine your eligibility based on your income alone if you are not married or if you are married but you are separated from your spouse (i.e., you or your spouse move out of the household and you are no longer living with your spouse) at the time you apply for a subsidy or when we redetermine your eligibility for a subsidy as described in § 418.3125.

(c) If your subsidy is based on your income and your spouse's income and we redetermine your subsidy as described in § 418.3120(b)(1), we will stop counting the income of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on your income and your spouse's income, we will continue counting the income of both you and your spouse if one of you is temporarily away from home as described in § 404.347 of this chapter.

§ 418.3315 What is earned income?

Earned income is defined in § 416.1110 of this chapter and may be in cash or in kind. We may count more of your earned income than you actually receive. We count gross income, which is more than you actually receive, if amounts are withheld from earned income because of a garnishment, or to pay a debt or other legal obligation such as taxes, or to make any other similar payments.

§ 418.3320 How do we count your earned income?

(a) *Wages.* We count your wages at the earliest of the following points: when you receive them, when they are credited to you, or when they are set aside for your use.

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. If you have net losses from self-employment, we deduct them from your other earned income. We do not deduct the net losses from your unearned income.

(c) *Payments for services performed in a sheltered workshop or work activities center.* We count payments you receive for services performed in a sheltered workshop or work activities center when you receive them or when they are set aside for your use.

(d) *In-kind earned income.* We count the current market value of in-kind earned income. For purposes of this part, we use the definition of current market value in § 416.1101 of this

chapter. If you receive an item that is not fully paid for and you are responsible for the unpaid balance, only the paid-up value is income to you (see example in § 416.1123(c) of this chapter).

(e) *Certain honoraria and royalties.* We count honoraria for services rendered and royalty payments that you receive in connection with any publication of your work. We will consider these payments as available to you when you receive them, when they are credited to your account, or when they are set aside for your use, whichever is earliest.

(f) *Period for which earned income is counted.* For purposes of determining subsidy eligibility and, if eligible, whether you should receive a full or partial subsidy, we consider all of the countable earned income you receive (or expect to receive) during the year for which we are determining your eligibility for this subsidy. However, in the first year that you or your spouse apply for the subsidy, we consider all of the countable earned income you and your living-with spouse receive (or expect to receive) starting in the month for which we determine your eligibility based on your application for a subsidy through the end of the year for which we are determining your eligibility. If we count your income for only a portion of the year, the income limit for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

§ 418.3325 What earned income do we not count?

(a) While we must know the source and amount of all of your earned income, we do not count all of it to determine your subsidy eligibility and whether you should receive a full or partial subsidy. We apply these income exclusions in the order listed in paragraph (b) of this section to your income. We never reduce your earned income below zero or apply any unused earned income exclusion to unearned income.

(b) For the year or partial year that we are determining your eligibility for the subsidy, we do not count as earned income:

(1) Any refund of Federal income taxes you or your living-with spouse receive under section 32 of the Internal Revenue Code (relating to the earned income tax credit) and payment you receive from an employer under section 3507 of the Internal Revenue Code (relating to advance payments of earned income tax credit);

(2) Earned income which is received infrequently or irregularly as explained in § 416.1112(c)(2) of this chapter;

(3) Any portion of the $20 per month exclusion described in § 416.1124(c)(12) of this chapter which has not been excluded from your combined unearned income (or the combined unearned income of you and your living-with spouse);

(4) $65 per month of your earned income (or the combined earned income you and your living-with spouse receive in that same year);

(5) Earned income you use to pay impairment-related work expenses described in § 416.976 of this chapter, if you are receiving a social security disability insurance benefit, your disabling condition(s) does not include blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these work expenses is equal to a standard percentage of your total earned income per month if you tell us that you have impairment-related work expenses. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for impairment-related work expenses will be 16.3 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for supplemental security income (SSI) recipients changes. If we make such a change we will publish a notice in the **Federal Register**. If excluding impairment-related work expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your total earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of impairment-related work expenses also applies to the earnings of your living-with spouse if he or she is receiving a social security disability insurance benefit, the disabling condition(s) does not include blindness and he or she is under age 65;

(6) One-half of your remaining earned income (or combined earned income of you and your living-with spouse); and

(7) Earned income as described in § 416.1112(c)(8) of this chapter that you use to meet any expenses reasonably attributable to the earning of the income if you receive a social security disability insurance benefit based on blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these expenses is equal to a standard percentage of your total earned income per month. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for blind work expenses will be 25 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for SSI recipients changes. If we make such a change we will publish a notice in the **Federal Register**. If excluding work expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of work expenses also applies to the earnings of your living-with spouse if he or she receives a social security disability insurance benefit based on blindness and is under age 65.

§ 418.3330 What is unearned income?

Unearned income is all income that is not earned income. We describe some of the types of unearned income we count in § 418.3335.

§ 418.3335 What types of unearned income do we count?

(a) Some of the types of unearned income we count are described in § 416.1121(a) through (g) of this chapter.

(b) We also count in-kind support and maintenance as unearned income. In-kind support and maintenance is any food and shelter that is given to you or that you receive because someone else pays for it (see § 418.3345).

§ 418.3340 How do we count your unearned income?

(a) *When income is received.* We count unearned income as available to you at the earliest of the following points: when you receive it, when it is credited to your account, or when it is set aside for your use.

(b) *When income is counted.* For purposes of determining eligibility and whether you should receive a full or partial subsidy, we consider all of the countable unearned income you and your living-with spouse receive (or expect to receive) during the year for which we are determining your eligibility for this benefit. However, in the first year you or your spouse apply

for the subsidy, we consider all of the countable unearned income both you and your living-with spouse receive (or expect to receive) starting in the month for which we determine eligibility for you or your living-with spouse based on an application for the subsidy. If we count your income for only a portion of the year, the income limits for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

(c) *Amount considered as income.* We may include more or less of your income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security benefit) has been reduced to recover an overpayment. In such a situation, you are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of this withholding is part of your unearned income.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program, we subtract legal fees connected with the claim. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(d) *Retroactive benefits.* We count retroactive monthly benefits such as social security benefits as unearned income in the year you receive the retroactive benefits.

(e) *Certain veterans benefits.* If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent. If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned income if you reside with the veteran or you receive your own separate payment from the Department of Veterans Affairs.

(f) *Social Security Cost-of-Living Adjustment.* We will not count as income the amount of the cost-of-living adjustment for social security benefits for any month through the month following the month in which the annual revision of the Federal poverty guidelines is published.

§ 418.3345 How do we determine the value of in-kind support and maintenance?

(a) You can receive in-kind support and maintenance, such as food and shelter, if you live alone, with others, or in a facility, or in an institution. The amount of income you derive from in-kind support and maintenance is the current market value of the food and shelter provided to you and your living-with spouse by someone other than you or your living-with spouse. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.

(b) The maximum amount of income we count from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible individual (as described in § 416.410 of this chapter) that is in effect for the period for which you are applying or are eligible for a subsidy. If you are married and living with your spouse, the maximum amount of income you and your spouse receive from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible couple (as described in § 416.412 of this chapter). If the current market value of the in-kind support and maintenance you receive is less than one-third of the applicable monthly SSI Federal benefit rate, we count only the current market value as income.

§ 418.3350 What types of unearned income do we not count?

(a) While we must know the source and amount of all of your unearned income, we do not count all of it to determine your eligibility for the subsidy. We apply to your unearned income the exclusions in § 418.3350(b) in the order listed. However, we never reduce your unearned income below zero and we never apply any unused unearned income exclusion to earned income except for the $20 per month exclusion described in § 416.1124(c)(12) of this chapter. For purposes of determining eligibility for a subsidy, and whether you should receive a full or partial subsidy, we treat the $20 per month exclusion as a $240 per year exclusion.

(b) We do not count as income the unearned income described in § 416.1124(b), (c)(1) through (c)(12), and (c)(14) through (c)(21) of this chapter.

(c) We do not count as income any dividends or interest earned on resources you or your spouse own.

Resources

§ 418.3401 What are resources?

For purposes of this subpart, resources are cash or other assets that an individual owns and could convert to cash to be used for his or her support and maintenance.

§ 418.3405 What types of resources do we count?

(a) We count liquid resources. Liquid resources are cash, financial accounts, and other financial instruments which can be converted to cash within 20 workdays, excluding certain nonworkdays as explained in § 416.120(d) of this chapter. Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit), retirement accounts (such as individual retirement accounts (IRA), 401(k) accounts), trusts if they are revocable, funds in an irrevocable trust if the trust beneficiary can direct the use of the funds, and similar items. We will presume that these types of resources can be converted to cash within 20 workdays and are countable as resources for subsidy determinations. However, if the individual establishes that a particular resource cannot be converted to cash within 20 workdays, we will not count it as a resource.

(b) We count the equity value of real property as a resource regardless of whether it can be sold within 20 workdays. However, we do not count the home that is your principal place of residence and the land on which it is situated as a resource as defined in § 418.3425(a).

§ 418.3410 Whose resources do we count?

(a) We count your resources. We count the resources of both you and your spouse regardless of whether one or both of you apply or are eligible for the subsidy if you are married and live with your spouse as of the month for which we determine your eligibility based on an application for a subsidy, as of the month for which we redetermine your eligibility for a subsidy as described in § 418.3125, or as of the month for which we determine

your eligibility due to a change you reported as described in § 418.3120.

(b) We will determine your eligibility based on your resources alone if you are not married or if you are married but you are separated from your spouse at the time you apply for a subsidy or at the time we redetermine your eligibility for a subsidy as described in § 418.3125.

(c) If your subsidy is based on the resources of you and your spouse and we redetermine your subsidy as described in § 418.3120(b)(1), we will stop counting the resources of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on the resources of you and your spouse, we will continue counting the resources of both you and your spouse if one of you is temporarily away from home as described in § 404.347 of this chapter.

§ 418.3415 How do we determine countable resources?

(a) *General rule.* Your countable resources are determined as of the first moment of the month for which we determine your eligibility based on your application for a subsidy or for which we redetermine your eligibility for a subsidy. A resource determination is based on what assets you (and your living-with spouse, if any) have, what their values are, and whether they are excluded as of the first moment of the month. We will use this amount as your countable resources at the point when we determine your eligibility for the subsidy unless you report to us that the value of your resources has changed as described in § 418.3120.

(b) *Equity value.* Resources, other than cash, are evaluated according to your (and your spouse's, if any) equity in the resources. For purposes of this subpart, the equity value of an item is defined as the price for which that item, minus any encumbrances, can reasonably be expected to sell on the open market in the particular geographic area involved.

(c) *Relationship of income to resources.* Cash you receive during a month is evaluated under the rules for counting income during the month of receipt. If you retain the cash until the first moment of the following month, the cash is countable as a resource unless it is otherwise excludable.

§ 418.3420 How are funds held in financial institution accounts counted?

(a) *Owner of the account.* Funds held in a financial institution account (including savings, checking, and time deposits also known as certificates of deposit) are considered your resources if you own the account and can use the funds for your support and maintenance. We determine whether you own the account and can use the funds by looking at how the account is held.

(b) *Individually-held account.* If you are designated as the sole owner by the account title and you can withdraw and use funds from that account for your support and maintenance, all of that account's funds are your resource regardless of the source. For as long as these conditions are met, we presume that you own 100 percent of the funds in the account. This presumption is not rebuttable.

(c) *Jointly-held account.* (1) If you are the only subsidy claimant or subsidy recipient who is an account holder on a jointly held account, we presume that all of the funds in the account belong to you. If more than one subsidy claimant or subsidy recipient are account holders, we presume that the funds in the account belong to those individuals in equal shares.

(2) If you disagree with the ownership presumption as described in paragraph (c)(1) of this section, you may rebut the presumption. Rebuttal is a procedure which permits you to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to you.

§ 418.3425 What resources do we exclude from counting?

In determining your resources (and the resources of your spouse, if any) the following items shall be excluded:

(a) Your home. For purposes of this exclusion, a home is any property in which you (and your spouse, if any) have an ownership interest and which serves as your principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located, and outbuildings;

(b) Non-liquid resources, other than nonhome real property. Non-liquid resources are resources that are not liquid resources as defined in § 418.3405. Irrevocable burial trusts and the irrevocable portion of prepaid burial contracts are considered non-liquid resources;

(c) Property of a trade or business which is essential to the means of self-support as provided in § 416.1222 of this chapter;

(d) Nonbusiness property which is essential to the means of self-support as provided in § 416.1224 of this chapter;

(e) Stock in regional or village corporations held by natives of Alaska during the twenty-year period in which the stock is inalienable pursuant to the Alaska Native Claims Settlement Act (see § 416.1228 of this chapter);

(f) Life insurance owned by an individual (and spouse, if any) to the extent provided in § 416.1230 of this chapter;

(g) Restricted allotted Indian lands as provided in § 416.1234 of this chapter;

(h) Payments or benefits provided under a Federal statute where exclusion is required by such statute;

(i) Disaster relief assistance as provided in § 416.1237 of this chapter;

(j) Funds up to $1,500 for the individual and $1,500 for the spouse who lives with the individual if these funds are expected to be used for burial expenses of the individual and spouse;

(k) Burial spaces, as provided in § 416.1231(a) of this chapter;

(l) Title XVI or title II retroactive payments as provided in § 416.1233 of this chapter;

(m) Housing assistance as provided in § 416.1238 of this chapter;

(n) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1235 of this chapter;

(o) Payments received as compensation incurred or losses suffered as a result of a crime, as provided in § 416.1229 of this chapter;

(p) Relocation assistance from a State or local government, as provided in § 416.1239 of this chapter;

(q) Dedicated financial institution accounts as provided in § 416.1247 of this chapter;

(r) A gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. The resource exclusion applies to any in-kind gift that is not converted to cash, or to a cash gift that does not exceed $2,000; and

(s) Funds received and conserved to pay for medical and/or social services as provided in § 416.1103 of this chapter.

Adjustments and Terminations

§ 418.3501 What could cause us to increase or reduce your subsidy or terminate your subsidy eligibility?

(a) Certain changes in your circumstances could cause us to increase or reduce your subsidy or terminate your subsidy eligibility. These changes include (but are not limited to) changes to:

(1) Your income;

(2) Your spouse's income if you are married and living with your spouse;

(3) Your resources;

(4) Your spouse's resources if you are married and living with your spouse; and

(5) Your family size.

(b) We will periodically review your circumstances (as described in § 418.3125) to make sure you are still eligible for a subsidy and, if eligible, whether you should receive a full or partial subsidy.

(c) If you report that your circumstances have changed or we receive other notice of such a change after we determine that you are eligible, we will review your circumstances as described in § 418.3120 to determine if you are still eligible.

§ 418.3505 How would an increase, reduction or termination affect you?

(a) An *increase* in your subsidy means that you would be able to pay a lower premium to participate in the Medicare Part D prescription drug program. An increased subsidy may also result in a reduction in any deductible or copayments for which you are responsible.

(b) A *reduction* in your subsidy means that you would have to begin to pay a premium or a higher premium to participate in the Medicare Part D prescription drug program. You may also have to begin to pay a deductible and higher copayments or increase the amounts of these payments.

(c) A *termination* means that you would no longer be eligible for a subsidy under the Medicare Part D prescription drug program.

§ 418.3510 When would an increase, reduction or termination start?

We are required to give you a written notice of our proposed action before increasing, reducing, or terminating your subsidy. We will not give this advance notice where we have factual information confirming your death, such as through a report by your surviving spouse, a legal guardian, a close relative, or a landlord. The notice will tell you the first month that we plan to make the change. The notice will also give you appeal rights which are explained in detail in §§ 418.3601 through 418.3670. Your appeal rights for a reduction or termination will include the right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request if your appeal is filed within 10 days after you receive our notice. You will not be required to pay back any subsidy you received while your appeal was pending.

§ 418.3515 How could you qualify for a subsidy again?

Unless you subsequently qualify as a deemed eligible person (per 42 CFR 423.773(c)), you must file a new application for a subsidy and meet all the requirements in § 418.3101.

Determinations and the Administrative Review Process

§ 418.3601 When do you have the right to administrative review?

You have the right to an administrative review of the initial determination we make about your eligibility and about your continuing eligibility for a subsidy and any other matter that gives you the right to further review as discussed in § 418.3605. If you are married and living with your spouse and your spouse's eligibility for a subsidy may be adversely affected by our decision upon review, we will notify your spouse before our review and give him or her the opportunity to present additional information for us to consider.

§ 418.3605 What is an initial determination?

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the relevant facts and will give the reasons for our conclusions. Examples of initial determinations that are subject to administrative and judicial review include but are not limited to:

(a) The initial calculation of your income and/or resources;

(b) The determination about whether or not you are eligible for a subsidy and if so, whether you receive a full or partial subsidy;

(c) The determination to reduce your subsidy; and

(d) The determination to terminate your subsidy.

§ 418.3610 Is there administrative or judicial review for administrative actions that are not initial determinations?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative or judicial review process as provided by these sections. For example, changes in your prescription drug program or voluntary disenrollment in the Part D program are not initial determinations that are subject to the administrative review process.

§ 418.3615 Will we mail you a notice of the initial determination?

(a) We will mail a written notice of the initial determination to you at your last known address. Generally, we will not send a notice if your premium subsidy stops because of your death or if the initial determination is a redetermination that your eligibility for a subsidy and the amount of your subsidy has not changed.

(b) The written notice that we send will tell you:

(1) What our initial determination is;

(2) The reasons for our determination; and

(3) The effect of our determination on your right to further review.

(c) We will mail you a written notice before increasing, reducing, or terminating your subsidy. The notice will tell you the first month that we plan to make the change and give you appeal rights. Your appeal rights for a reduction or termination will include the right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request if your appeal is filed within 10 days after you receive our notice.

§ 418.3620 What is the effect of an initial determination?

An initial determination is binding unless you request an appeal within the time period stated in § 418.3630(a) or we revise it as provided in § 418.3678.

§ 418.3625 What is the process for administrative review?

The process for administrative review of initial determinations is either a hearing conducted by telephone or a case review. We will provide you with a hearing by telephone when you appeal the initial determination made on your claim, unless you choose not to participate in a telephone hearing. If you choose not to participate in a telephone hearing, the review will consist of a case review. The hearing will be conducted by an individual who was not involved in making the initial determination. The individual who conducts the hearing will make the final decision after the hearing. If you are dissatisfied after we have made a final decision, you may file an action in Federal district court.

(a) *Notice scheduling the telephone hearing.* Once you request a telephone hearing, we will schedule the hearing and send you a notice of the date and time of the hearing at least 20 days before the hearing. The notice will contain a statement of the specific issues to be decided and tell you that you may designate a personal representative (as defined in 42 CFR 423.772) to represent you during the proceedings. The notice will explain the opportunity and procedure for

reviewing your file and for submitting additional evidence prior to the hearing. It also will provide a brief explanation of the proceedings, of the right and process to subpoena witnesses and documents, of the procedures for requesting a change in the time or date of your hearing, and of the procedure for requesting interpreter services.

(b) *Opportunity to review your file.* Prior to the telephone hearing, you will be able to review the information that was used to make an initial determination in your case. You can provide us with additional information you wish to have considered at the hearing.

(c) *Hearing waived, rescheduled, or missed.* If you decide you do not want a hearing by telephone or if you are not available at the time of the scheduled hearing, the decision in your case will be made by a case review. This means that the decision will be based on the information in your file and any additional information you provide. You may ask for a change in the time and date of the telephone hearing; this should be done at the earliest possible opportunity prior to the hearing. Your request must state your reason(s) for needing the change in time or date and state the new time and date you want the hearing to be held. We will change the time and date, but not necessarily to your preferred time or date, of the telephone hearing if you have good cause. If you miss the scheduled hearing and the decision in your case is decided by a case review, we will provide a hearing, at your written request, if we decide you had good cause for missing the scheduled hearing. Examples of good cause include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for your hearing;

(4) A witness who will testify to facts material to your case would be unavailable to participate in the scheduled hearing and the evidence cannot be obtained any other way;

(5) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that you may have; or

(6) You did not receive notice of the hearing appointment.

(d) *Witnesses at hearing.* When we determine that it is reasonably necessary for the full presentation of a case, we may issue a subpoena to compel the production of certain evidence or testimony.

§ 418.3630 How do you request administrative review?

(a) *Time period for requesting review.* You must request administrative review within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section). You can request administrative review in person, by phone, fax, or mail. If you miss the time frame for requesting administrative review, you may ask us for more time to request a review. The process for requesting an extension is explained further in paragraph (c) of this section.

(b) *Where to file your request.* You can request administrative review by mailing or faxing a request or calling or visiting any Social Security office.

(c) *When we will extend the time period to request administrative review.* If you want a review of the initial determination but do not request one within 60 days after the date you receive notice of the initial determination, you may ask us for more time to request a review. Your request for an extension must explain why it was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 418.3640.

§ 418.3635 Can anyone request administrative review on your behalf?

Your personal representative (as defined in 42 CFR 423.772) may request administrative review on your behalf. That person can send additional information to us on your behalf and participate in the hearing.

§ 418.3640 How do we determine if you had good cause for missing the deadline to request administrative review?

(a) In determining whether you have shown that you have good cause for missing a deadline to request review we consider:

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

(b) Examples of circumstances where good cause may exist include, but are not limited to, the following situations:

(1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.

(2) There was a death or serious illness in your immediate family.

(3) Important records were destroyed or damaged by fire or other accidental cause.

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested a review.

(6) We gave you incorrect or incomplete information about when and how to request administrative review.

(7) You did not receive notice of the initial determination.

(8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known the need to file timely, or which prevented you from filing timely.

§ 418.3645 Can you request that the decision-maker be disqualified?

The person designated to conduct your hearing will not conduct the hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. If you object to the person who will be conducting your hearing, you must notify us at your earliest opportunity. The Commissioner or the Commissioner's designee will decide whether to appoint another person to conduct your hearing.

§ 418.3650 How do we make our decision upon review?

After you request review of our initial determination, we will review the information that we considered in making the initial determination and any other information we receive. We will make our decision based on this information. The issues that we will review are the issues with which you disagree. We may consider other issues,

but we will provide you with advance notice of these other issues as explained in § 418.3625. If you are dissatisfied with our final decision, you may file an action in Federal district court.

§ 418.3655 How will we notify you of our decision after our review?

We will mail a written notice of our decision on the issue(s) you appealed to you at your last known address. Generally, we will not send a notice if your subsidy stops because of your death. The written notice that we send will tell you:

(a) What our decision is;

(b) The reasons for our decision;

(c) The effect of our decision; and

(d) Your right to judicial review of the decision.

§ 418.3665 Can your request for a hearing or case review be dismissed?

We will dismiss your request for a hearing or case review under any of the following conditions:

(a) At any time before notice of the decision is mailed, you ask that your request for administrative review be withdrawn; or

(b) You failed to request administrative review timely and did not have good cause for missing the deadline for requesting review.

§ 418.3670 How will you be notified of the dismissal?

We will mail a written notice of the dismissal of your request for administrative review to you at your last known address. The dismissal is not subject to judicial review and is binding on you unless we vacate it. The decision-maker may vacate any dismissal of your request for administrative review if, within 60 days after the date you receive the dismissal notice, you request that the dismissal be vacated and show good cause why the request should not be dismissed. The decision-maker shall advise you in writing of any action he or she takes.

§ 418.3675 How does our decision affect you?

Our decision is binding unless you file an action in Federal district court seeking review of our final decision or we revise it as provided in § 418.3678. You may file an action in Federal district court within 60 days after the date you receive notice of the decision. You may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the decision-maker who issued the final decision in your case. If you show that you had good cause for missing the deadline, we will extend the deadline. We will use the standards in § 418.3640 to decide if you had good cause to miss the deadline.

§ 418.3678 What is the process for correcting Agency clerical errors?

If we become aware within 60 days of the date of our initial determination or our decision following a case review or telephone hearing, that a clerical error was made in determining whether or not you are eligible for a subsidy (either in whole or in part), we may issue a revised initial determination which would be effective back to the date you originally filed your application or the effective date of a subsidy changing event, provided you meet the requirements in § 418.3101. We may revise an initial determination or decision regardless of whether such revised determination or decision is favorable or unfavorable to you. If the revised determination or decision (which is a new initial determination) is not favorable to you, you will not be responsible for paying back any subsidy received prior to the revised determination or decision. We will mail you a notice of the revised determination which will explain to you that we have made a revised determination and that this determination replaces an earlier determination, how this determination affects your subsidy eligibility, and your right to request a hearing.

§ 418.3680 What happens if your case is remanded by a Federal court?

When a Federal court remands a case to the Commissioner for further consideration, the decision-maker (as described in § 418.3625) acting on behalf of the Commissioner, may make a decision. That component will follow the procedures in § 418.3625, unless we decide that we can make a decision that is wholly favorable to you without another hearing. Any issues relating to your subsidy may be considered by the decision-maker whether or not they were raised in the administrative proceedings leading to the final decision in your case.

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Part VI

Securities and Exchange Commission

17 CFR Parts 200, 232, 240, et al.

Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 15(d) of the Securities Exchange Act of 1934; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 232, 240 and 249

[Release No. 34–53020; International Series Release No. 1295; File No. S7–12–05]

RIN 3235–AJ38

Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty To File Reports Under Section 15(d) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to amend the rules allowing a foreign private issuer to terminate the registration of a class of equity securities under section 12(g) of the Securities Exchange Act of 1934 (and thus stop filing reports required as a result of registration) and to cease its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Exchange Act. Under the current rules, a foreign private issuer may find it difficult to terminate its Exchange Act registration and reporting obligations despite the fact that there is relatively little interest in the issuer's securities among United States investors. Moreover, currently a foreign private issuer can only suspend, and cannot permanently terminate, a duty to report arising under section 15(d). The proposed rules would permit the termination of Exchange Act reporting regarding a class of equity securities under either section 12(g) or section 15(d) by a foreign private issuer that meets specified criteria designed to measure U.S. market interest for that class of securities. The proposed rules would also permit a foreign private issuer to terminate, and not merely suspend, its section 15(d) reporting obligations regarding a class of debt securities as long as it meets conditions similar to the current requirements for suspending its reporting obligations relating to that class of debt securities. At the same time, the proposed rules would seek to provide U.S. investors with ready access through the Internet to material information about a foreign private issuer that is required by its home country on an ongoing basis after it has exited the Exchange Act reporting system.

DATES: Comments should be received on or before February 28, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's *Internet comment form (http://www.sec.gov/rules/proposed.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–12–05 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number S7–12–05. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, at (202) 551–3450, in the Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We propose to amend Commission Rule 30–1,[1] Rule 101[2] of Regulation S–T,[3] and Rules 12g3–2, 12g–4 and 12h–3[4] under the Securities Exchange Act of 1934 (''Exchange Act''),[5] and to add Rule 12h–6[6] and Form 15F[7] under the Exchange Act.

I. Background

A. Overview of the Current Rules Governing Exiting the Exchange Act Reporting Regime

Under the current Exchange Act reporting regime, whether a domestic or foreign private issuer[8] can terminate its reporting obligations under section 13(a) of the Act[9] depends on how it became subject to those obligations. An issuer may have become subject to section 13(a) reporting obligations by:

- Listing a class of either equity or debt securities on a national securities exchange and registering this class under section 12(b) of the Exchange Act;[10]
- Registering a class of equity securities under section 12(g)[11] either voluntarily or because it had 500 or more security holders of record and more than $10 million in total assets[12] and, if a foreign private issuer, more than 300 shareholders resident in the United States on the last day of its most recently completed fiscal year;[13] or
- Registering either equity or debt securities under a Securities Act registration statement, which has gone effective, thus triggering section 13(a) reporting obligations under Section 15(d) of the Exchange Act.[14]

An issuer may be subject to reporting obligations under more than one of the above statutory sections and rules. While an issuer is deemed to have only one active set of reporting obligations, when an issuer attempts to exit the Exchange Act reporting system, it must consider whether there are any dormant or suspended reporting obligations that would preclude the issuer from ceasing its Exchange Act reporting.

For example, an issuer may have active section 13(a) reporting obligations because it has a class of equity securities listed on a national securities exchange and registered with the Commission

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[1] 17 CFR 200.30–1.

[2] 17 CFR 232.101.

[3] 17 CFR 232.10 *et seq.*

[4] 17 CFR 240.12g3–2, 240.12g–4 and 240.12h–3.

[5] 15 U.S.C. 78a *et. seq.*

[6] 17 CFR 240.12h–6, as proposed.

[7] 17 CFR 249.324, as proposed.

[8] As defined in Rule 3b-4(c) (17 CFR 240.3b–4(c)), a foreign private issuer is a corporation or other organization incorporated or organized in a foreign country that either has 50 percent or less of its outstanding voting securities held of record by United States residents or, if more than 50 percent of its voting securities are held by U.S. residents, about which none of the following are true:

(1) A majority of its executive officers or directors are U.S. citizens or residents;

(2) More than 50 percent of its assets are located in the United States; and

(3) The issuer's business is administered principally in the United States.

[9] 15 U.S.C. 78m(a).

[10] 15 U.S.C. 78*l*(b).

[11] This statutory section only applies to equity securities. *See* Exchange Act Section 12(g)(1) [15 U.S.C. 78*l*(g)(1)].

[12] Exchange Act Rule 12g–1 (17 CFR 240.12g–1).

[13] Exchange Act Rule 12g3–2(a) (17 CFR 240.12g3–2(a)). A foreign private issuer may avoid an Exchange Act registration obligation under section 12(g) by establishing the exemption under Exchange Act Rule 12g3–2(b) (17 CFR 240.12g3–2(b)).

[14] 15 U.S.C. 78o(d). There are other methods by which an issuer may be obliged to file reports under section 13(a), such as, for example, under Exchange Act Rule 12g-3 (17 CFR 240.12g–3) in the case of a successor registrant.

under section 12(b) of the Exchange Act. When attempting to exit the Exchange Act reporting system, the registrant not only must take steps to effect its delisting from the national securities exchange,[15] but also it must consider whether it has any dormant or suspended reporting obligations under section 12(g)[16] or 15(d) that will become operative once its section 12(b) registration ceases.[17]

Exchange Act Rule 12g-4 currently governs whether an issuer may terminate its registration of a class of securities under section 12(g) of the Exchange Act and its corresponding section 13(a) reporting obligations.[18] Under this rule, a foreign private issuer may seek termination of its registration of a class of securities under section 12(g) by certifying in Form 15 [19] that the subject class of securities is held by less than 300 residents in the United States or by less than 500 U.S. residents when the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.[20] For the purpose of determining the number of U.S. resident shareholders under this rule, a foreign private issuer must use the method of counting provided under Exchange Act Rule 12g3–2(a).[21] This method requires looking through the record ownership of brokers, dealers, banks or other nominees on a worldwide basis and counting the number of separate accounts of customers resident in the United States for which the securities are held.[22] Under this rule, issuers are required to make inquiries of all nominees, wherever located and wherever in the chain of ownership, for the purpose of assessing the number of U.S. resident holders.

An issuer that has determined that it meets the threshold requirements for termination of registration of a class of securities under Rule 12g–4, and has also never engaged in a registered offering under the Securities Act, may seek termination of its Exchange Act reporting obligations by filing the Form 15 certification.[23] However, an issuer that has registered securities under an effective Securities Act registration statement must determine if it has any suspended reporting obligations under section 15(d) that will become operative after it has terminated the registration of a class of securities under Exchange Act section 12(g).

Rule 12h–3 [24] is the Exchange Act rule governing when an issuer may suspend its reporting obligations under section 15(d).[25] While Rule 12h–3's standards are substantially similar to those under Rule 12g–4,[26] there are two important differences. First, an issuer may generally not suspend its section 15(d) reporting obligations until it has filed one Exchange Act annual report after the offering in question. Second, an issuer cannot permanently terminate its reporting obligations under section 15(d) but can only suspend those obligations.[27] Therefore, for as long as the subject class of securities is outstanding, a foreign private issuer must also determine at the end of each fiscal year whether the number of U.S. resident security holders or total number of record holders has increased enough to trigger anew its section 15(d) reporting obligations.

B. The Increased Internationalization of the U.S. Securities Markets

It has been almost four decades since the Commission first adopted the ''300 U.S. resident shareholder'' standard as the benchmark for determining both when a foreign private issuer must register a class of equity securities under section 12(g) and when it may terminate that registration.[28] Moreover, it has been over two decades since the Commission adopted Form 15 under Rules 12g–4 and 12h–3.[29]

Since then, market globalization, advances in information technology, the increased use of American Depositary Receipt (''ADR'') [30] facilities by foreign companies to sell their securities in the United States,[31] and other factors have increased significantly the number of foreign companies that have engaged in cross-border activities and sought listings in U.S. securities markets, as well as increased the amount of U.S. investor interest in the securities of foreign companies. For example:

- The number of foreign companies with Exchange Act reporting obligations increased from approximately 300 in 1985 to over 1,200 in 2004; [32]
- The number of foreign companies listed on the New York Stock Exchange (''NYSE'') increased from 54, or approximately 3.5% of the total number of NYSE-listed companies in 1985, to

[15] Exchange Act Rule 12d2–2 (17 CFR 240.12d2–2) governs the process of the delisting of a class of securities from a national securities exchange. To effect the delisting and subsequent termination of an issuer's registration of a class of securities under section 12(b), the national securities exchange or issuer must file a Form 25 with the Commission. We recently adopted amendments to our rules and Form 25 to streamline the procedures for removing from listing, and withdrawing from registration, securities under section 12(b). *See* Release No. 34–52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[16] A registrant may have section 12(g) reporting obligations following its termination of registration under section 12(b): (1) If it had initially registered the class of securities under section 12(g) prior to listing the securities on a national securities exchange; or (2) under Exchange Act Rule 12g–2 (17 CFR 240.12g–2). That rule provides that any class of securities that would have been required to be registered under section 12(g) except for the fact that it was listed and registered on a national securities exchange shall be deemed to be registered under section 12(g) upon the termination of registration under section 12(b) as long as the class of securities are not exempt from registration under section 12 and are held of record by 300 or more persons.

[17] Exchange Act section 15(d) automatically suspends the duty to file reports under that section regarding securities registered under an effective Securities Act registration statement once the issuer has registered the class of securities under section 12 of the Exchange Act.

[18] An issuer must look to this rule both when it has only registered a class of securities under section 12(g) and following the termination of registration of a class of equity securities under section 12(b).

[19] 17 CFR 249.323.

[20] Exchange Act Rule 12g–4(a)(2) (17 CFR 240.12g-4(a)(2)). Alternatively, a foreign private issuer may seek to terminate its section 12(g) registration under the Rule 12g-4 provision that applies to any issuer, whether domestic or foreign. Under this provision, an issuer must certify on Form 15 that its class of equity securities is held of record by less than 300 persons or by less than 500 persons when the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years. Exchange Act Rule 12g-4(a)(1) (17 CFR 240.12g–4(a)(1)).

[21] 17 CFR 240.12g3–2(a).

[22] *See* 17 CFR 240.12g3–2(a)(1).

[23] Filing this form immediately suspends the issuer's Exchange Act reporting obligations. If, after 90 days from the date of filing the Form 15, the Commission has not objected, the suspension becomes a termination. *See* Rule 12g-4(b) (17 CFR 12g-4(b)).

[24] 17 CFR 240.12h–3.

[25] Section 15(d) itself provides that an issuer cannot suspend its reporting obligations unless the subject class of securities is held of record by less than 300 persons at the beginning of a fiscal year other than the year in which the Securities Act registration statement triggering the section 15(d) reporting obligations became effective.

[26] *See*, *in particular*, Rule 12h–3(b)(2) (17 CFR 240.12h–3(b)(2)).

[27] Exchange Act Rule 12h–3(a) (17 CFR 240.12h–3(a)).

[28] *See* Release No. 34–8066 (April 28, 1967).

[29] *See* Release No. 34–20784 (March 22, 1984), 49 FR 12688 (March 30, 1984).

[30] An ADR is a negotiable instrument that represents an ownership interest in a specified number of securities, which the securities holder has deposited with a designated bank depositary. Use of an ADR facility makes it easier for a U.S. resident to collect dividends in U.S. dollars. Moreover, because the clearance and settlement process for ADRs generally is the same for securities of domestic companies that are traded in U.S. markets, a U.S. holder of an ADR is able to hold securities of a foreign company that trades, clears and settles within automated U.S. systems and within U.S. time periods.

[31] For example, the number of ADR issues traded on the NYSE increased from 134 in 1993 to 344 in 2004. During this same period, the market capitalization of NYSE-traded ADRs nearly quadrupled. *See* ''Summary Data on NYSE-Listed Non-U.S. Companies'' located at *http://www.nyse.com/attachment/nonussum0916.xls*.

[32] *See* ''International Registered and Reporting Companies'' located at *http://www.sec.gov/divisions/corpfin/internatl/companies.shtml*; *see also The New Economy Handbook*, Derek C. Jones, editor, pp. 428–429 (2003).

460 or over 16% of the total number of NYSE-listed companies in 2004; [33] and

• The average daily trading value of NYSE-traded foreign securities increased from over $350 million, or over 5% of the total value of NYSE-traded securities in 1991, to over $4.5 billion, or over 10% of the total value of NYSE-traded securities in 2000.[34]

C. Concerns Regarding the Exchange Act Reporting Exiting Rules for Foreign Private Issuers

Representatives of foreign companies and foreign industry associations have recently voiced their concerns to the Commission about the rules that govern whether a foreign private issuer may exit the Exchange Act registration and reporting regime.[35] These representatives maintain that, due to the increased internationalization of U.S. investor interest, the ''300 U.S. resident shareholder'' standard has become outdated and too easily exceeded by a foreign company that may have engaged in very little recent selling activity in the United States. According to these representatives, after a few years of listing its securities in the United States, a foreign company may discover that there is little U.S. market interest in its securities. Yet because it has not been able to reduce the number of its U.S. shareholders to below 300, it must continue to incur the costs of being an Exchange Act reporting company.

These representatives have further criticized the exit rules' reliance on the number of U.S. resident shareholders because, with the advent of book-entry recording,[36] it is difficult and costly to arrive at an accurate count of a foreign company's U.S. resident shareholders. These representatives also are critical of Rule 12h–3 because it merely suspends rather than permanently terminates a company's section 15(d) reporting obligations. As such, years after filing a Form 15, a foreign company may find that it has once again exceeded the 300 U.S. resident shareholder threshold, and thereupon again become subject to section 15(d) reporting duties, without regard to its U.S. market activity.

Finally, these representatives disagree with the fact that our current rule does not permit a foreign private issuer to obtain the Exchange Act Rule 12g3–2(b) exemption [37] if, during the previous 18 months, it has had a class of securities registered under section 12 or a reporting obligation, suspended or active, under section 15(d) of the Exchange Act.[38]

II. Discussion

A. Summary of the Proposed Rule Amendments

In light of the increased internationalization of the U.S. securities markets that has occurred, we believe that it is time to reconsider the rules allowing a foreign private issuer to exit the Exchange Act registration and reporting regime. We propose to amend Rules 12g–4 and 12h–3 to eliminate the provisions that primarily condition a foreign private issuer's eligibility to cease its Exchange Act reporting obligations on whether the number of its U.S. resident security holders has fallen below the 300 or 500 person threshold. In their place, we propose new Exchange Act Rule 12h–6 that would permit a foreign private issuer that meets the conditions discussed below to achieve the following:

• Termination of the registration of a class of equity securities under section 12(g) and its resulting section 13(a) reporting obligations;

• Permanent termination of its section 15(d) reporting obligations regarding a class of equity securities; and

• Permanent termination of its section 15(d) reporting obligations regarding a class of debt securities.

A foreign private issuer would be eligible to terminate its Exchange Act reporting obligations regarding a class of equity securities under proposed Rule 12h–6 if it met the following conditions:

• The issuer has been an Exchange Act reporting company for the past two years, has filed or furnished all reports required for this period, and has filed at least two annual reports under section 13(a);

• The issuer's securities have not been sold in the United States in either a registered or unregistered offering under the Securities Act during the preceding 12 months other than securities:

- Sold to the issuer's employees;
- Sold by selling security holders in non-underwritten offerings;
- Exempt from registration under section 3 of the Securities Act, except section 3(a)(10); [39] and
- Constituting obligations having a maturity of less than nine months at the time of issuance and offered and sold in transactions exempted from registration under section 4(2) of the Securities Act; [40] and

• For the preceding two years, the issuer has maintained a listing of the subject class of securities on an exchange in its home country, as defined in Form 20–F,[41] which constitutes the primary trading market for the securities.

Rule 12h–6 would further permit a foreign private issuer seeking to terminate its registration and reporting obligations regarding a class of equity securities to meet one of a set of alternative benchmarks, which are not based on a record holder count, and which depend on whether the issuer is a well-known seasoned issuer.[42] If a

[33] *See* ''Stocks of non-U.S. Corporate Issuers'' located at *http://www.nysedata.com/factbook*; *see also* ''Listed Company Directory'' located at *http://www.nyse.com/about/listed/listed.html*. A similar increase occurred on Nasdaq. *See The New Economy Handbook* at p. 429.

[34] *See* ''NYSE Value of Trading—U.S. and non-U.S. Companies'' located at *http://www.nyse.com/attachment/sumdolv051005.xls*. In September 2005, the average daily trading value of NYSE-traded foreign securities was over 9% of the total value of NYSE-traded securities.

[35] *See, for example*, the letters from the Association Francaise Des Entreprises Privees (''AFEP'') and other European industry group representatives, dated February 9, 2004 and March 18, 2005 (the ''AFEP letters''), which we will make publicly available on our Web site and in the Commission's Public Reference Room in its Washington, DC headquarters, together with comment letters received concerning this proposed rulemaking.

[36] The last three decades have seen the development of a U.S. clearance and settlement system that relies on electronic book-entry to settle securities transactions and transfer ownership rather than one dependent on the use of paper certificates. For an overview of this development, *see* Release No. 33–8398 (March 11, 2004), 69 FR 12922 (March 18, 2004), the text surrounding n. 104. This movement to electronic book-entry clearance and settlement systems has taken place on a global basis as well, as both developed and developing securities markets have sought to improve efficiency.

[37] 17 CFR 240.12g3–2(b). Rule 12g3–2(b) provides an exemption from registration under section 12(g) with respect to a foreign private issuer that submits to the Commission, on a current basis, the home country materials required by the rule.

[38] Exchange Act Rule 12g3–2(d)(1) (17 CFR 12g3–2(d)(1)). This exception to the Rule 12g3–2(b) exemption does not apply to registered Securities Act offerings filed by Canadian companies on certain Multijurisdictional Disclosure System (''MJDS'') forms. Exchange Act Rule 12g3–2(d) also precludes the Rule 12g3–2(b) exemption to a foreign private issuer's securities issued to acquire by merger or similar transaction an issuer that had securities registered under section 12 or a reporting obligation, suspended or active, under section 15(d), except for a transaction registered on specified MJDS forms. *See* Exchange Act Rule 12g3–2(d)(2) (17 CFR 240.12g3–2(d)(2)).

[39] 15 U.S.C. 77c(a)(10).

[40] 15 U.S.C. 77d(2).

[41] 17 CFR 249.220f. Form 20–F General Instruction F defines ''home country'' as the jurisdiction in which the issuer is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing.

[42] For purposes of Rule 12h–6 a ''well-known seasoned issuer'' means a well-known seasoned issuer as defined in Securities Act Rule 405 (17 CFR 230.405) that meets the requirements of paragraph (1)(i)(A) of that definition. Under Rule 12h–6, therefore, a ''well-known seasoned issuer'' must have a worldwide market value of its outstanding voting and non-voting common equity held by non-affiliates of $700 million or more, and must satisfy

well-known seasoned issuer, then a foreign private issuer could terminate its Exchange Act registration and reporting obligations as long as either:

• The U.S. average daily trading volume of the subject class of securities has been no greater than 5 percent of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, and U.S. residents held no more than 10 percent of the issuer's worldwide public float [43] at a date within 60 days before the end of that same period; or

• Regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float at a date within 120 days before the filing date of the Form 15F, which is the form that a foreign private issuer would have to file to certify that it meets the conditions for terminating its Exchange Act registration and reporting obligations under proposed Rule 12h–6.

If not a well-known seasoned issuer, then a foreign private issuer could terminate its Exchange Act registration and reporting obligations regarding a class of equity securities as long as, regardless of U.S. trading volume, U.S. residents held no more than 5 percent of the issuer's worldwide public float at a date within 120 days before the filing date of the Form 15F.

Under proposed Rule 12h–6, if a foreign private issuer is unable to meet one of these proposed benchmarks, but satisfies the other conditions of the rule, it could still terminate its Exchange Act registration and reporting obligations regarding a class of equity securities as long as that class of securities is held of record by less than 300 persons on a worldwide basis or less than 300 persons resident in the United States at a date within 120 days before the filing date of the Form 15F.

A foreign private issuer would be eligible to terminate its section 15(d) reporting obligations regarding a class of debt securities under proposed Rule 12h–6 if it met the following conditions:

• The issuer has filed or furnished all required reports under section 15(d), including at least one annual report pursuant to section 13(a) of the Act; and

• At a date within 120 days before the filing date of the Form 15F the class of debt securities is either held of record by less than 300 persons on a worldwide basis or less than 300 persons resident in the United States.

Rules 12g–4 and 12h–3 currently require the filing of Form 15 by which an issuer certifies that it meets the conditions for ceasing its Exchange Act reporting obligations. Unlike Form 15, proposed new Form 15F would require a foreign private issuer to provide specified information regarding several items that would enable investors to obtain information regarding the issuer's decision to terminate its Exchange Act reporting obligations. In addition, proposed new Form 15F would help Commission staff to assess whether the issuer qualifies for termination of its Exchange Act reporting obligations. As under current Rules 12g–4 and 12h–3, the filing of Form 15F would automatically suspend an issuer's reporting duties. If the Commission has not objected, the suspension would become a permanent termination 90 days after the filing of the Form 15F.[44]

Proposed Rule 12h–6 would further require a foreign private issuer, no later than fifteen business days prior to the filing of the Form 15F, to publish a notice, such as a press release, in the United States that discloses its intent to terminate its section 13 reporting obligations, and to submit a copy of the press release either under cover of a Form 6–K, before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

Finally, we propose to amend Exchange Act Rule 12g3–2(d) to permit a foreign private issuer to establish the Rule 12g3–2(b) exemption for a class of equity securities that is the subject of a Form 15F immediately upon the effectiveness of termination of Exchange Act reporting pursuant to Rule 12h–6. As a condition to maintaining this exemption, a foreign private issuer would have to publish in English the home country materials required by Rule 12g3–2(b) on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market.

We recognize that U.S. investors benefit from the investment opportunities provided by the registration of foreign private issuers with the Commission and listing and publicly offering securities in the United States. The current exit process may serve as a disincentive to foreign private issuers accessing the U.S. public capital markets because of the burdens and uncertainties associated with terminating registration and reporting under the Exchange Act. We believe that these changes to the exit process for foreign private issuers, if adopted, should provide those issuers with a meaningful option to terminate their Exchange Act reporting obligations when, after electing to access the U.S. public capital markets, they find a diminished level of U.S. investor interest in their securities. As a result, foreign private issuers should be more willing initially to register their securities with the Commission when there is a clearly defined process with more appropriate benchmarks by which they can terminate their Exchange Act reporting obligations if after a period of time U.S. investor interest is not significant relative to non-U.S. investor interest.

In addition, we believe the conditions under proposed Rule 12h–6 are consistent with the interests of U.S. investors in other ways. The two-year reporting and the one-year dormancy conditions are intended to provide sufficient time periods of Commission reporting and of not promoting U.S. investor interest through recent capital raising. The conditions relating to trading on a non-U.S. securities exchange and the benchmarks based on relevant U.S. public float and (for well-known seasoned issuers) relative U.S. trading volume support our view that foreign private issuers that would terminate Exchange Act reporting under proposed Rule 12h–6 should be subject to an ongoing disclosure and financial reporting regime, and have a significant market following, in their home market. The conditions relating to the publication of a press release or other notice, the filing of proposed Form 15F, and the immediate availability of the exemption under Rule 12g3–2(b) promote transparency of the exit process as well as access by U.S. investors to ongoing home country information

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the other requirements of the definition in Securities Act Rule 405 (for example, the issuer must not be an ''ineligible issuer''). The time of determination of well-known seasoned issuer status under Rule 12h–6 would be a date within 120 days of the filing of proposed Form 15F. Although Rule 405 also defines ''well-known seasoned issuer'' alternatively to mean an issuer that has registered a specified amount of non-convertible securities other than equity over a three-year period, that part of the definition is inapplicable under proposed Rule 12h–6. Only the equity prong of the definition is relevant for purposes of termination of registration and reporting requirements under proposed Rule 12h–6. The proposed conditions that would permit a foreign private issuer to terminate its section 15(d) reporting obligations regarding a class of debt securities do not distinguish between well-known seasoned issuers and other issuers.

[43] The term ''public float'' refers to the outstanding voting and non-voting equity securities held by an issuer's non-affiliates. As proposed, when calculating the percentage of its worldwide public float held by U.S. residents, an issuer would include in its worldwide public float only the class or classes of equity securities regarding which there is an Exchange Act reporting obligation.

[44] The Commission is also proposing to amend its delegated authority rules to permit the Division of Corporation Finance to accelerate the effectiveness of a Form 15F termination of reporting sooner than the 90th day at the request of the issuer. *See* the proposed amendment to 17 CFR 200.30–1(e). This delegation of authority currently exists with respect to Form 15, although it is rarely used.

about issuers that terminate their Exchange Act reporting obligations.

B. Proposed Exchange Act Rule 12h–6

1. Purpose and Scope of Proposed Rule 12h–6

Like current Rule 12g–4, proposed Rule 12h–6 would permit a foreign private issuer meeting specified criteria to terminate its registration of a class of securities under section 12(g) and its corresponding section 13 reporting obligations after filing a certification with the Commission. However, unlike the current Exchange Act reporting exiting regime, proposed Rule 12h–6 would also permit a foreign private issuer to terminate permanently, rather than merely suspend, its reporting obligations regarding a class of equity or debt securities, or both, under section 15(d).

As discussed below, proposed Rule 12h–6 would permit termination of Exchange Act registration and reporting regarding a class of a foreign private issuer's equity securities for which U.S. investor interest is small relative to non-U.S. investor interest, and the expected risk of harm to U.S. investors of termination of registration and reporting is low. Once a foreign company has met the proposed Rule 12h–6 criteria, and taken the other necessary steps to effect termination of reporting,[45] we believe that it is unlikely that, following termination of its reporting obligations, U.S. trading in the subject class of securities would increase to such an extent as to justify reimposing Exchange Act reporting obligations, and the proposed rule would not do so.

We have proposed to require a foreign company that terminates its Exchange Act registration and reporting under Rule 12h–6 regarding a class of equity securities to provide material home country documents in English under Rule 12g3–2(b) on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market.[46] We believe that this proposed ''home country disclosure'' requirement should provide continued access to issuer information for U.S. investors that continue to own the subject class of equity securities following a foreign company's termination of Exchange Act registration and reporting. Merely suspending a foreign company's section 15(d) reporting obligations could discourage foreign companies from initially registering their securities with the Commission and joining our Exchange Act reporting system, to the detriment of investors in U.S. securities markets.[47]

Proposed Rule 12h–6 would further permit a foreign private issuer to terminate permanently its section 15(d) reporting obligations regarding a class of debt securities as long as the issuer met conditions similar to the current requirements for suspending its reporting obligations under Rule 12h-3. One of these conditions would require a foreign private issuer's debt securities to be held either by less than 300 persons on a worldwide basis or by less than 300 U.S. residents.[48] Once the number of a foreign private issuer's debt holders has fallen below either of these thresholds, we believe that it is unlikely that the number of its debt holders would increase enough to warrant reimposing Exchange Act reporting obligations. Moreover, by providing a definite means of exiting the Exchange Act reporting system, we would remove one possible disincentive for foreign companies to register their debt securities with the Commission, to the benefit of U.S. investors.

Comment Solicited

We solicit comment on the purpose and scope of proposed Rule 12h–6.

- Should we permit a foreign company to terminate permanently its section 15(d) reporting obligations regarding a class of equity securities, as proposed?
- Should we instead merely permit a foreign company to suspend its section 15(d) reporting obligations regarding a class of equity securities on the condition that those obligations would resume once it no longer meets the criteria specified under proposed Rule 12h–6?
- If so, should we also merely suspend section 12(g) reporting on the same grounds?
- Should we permit a foreign company to terminate its section 15(d) reporting obligations regarding a class of debt securities, as proposed?
- Should we prohibit a foreign company whose sole Exchange Act reporting obligations arise from a class of debt securities under section 15(d) to terminate those reporting obligations under proposed Rule 12h–6?
- Should we merely permit a foreign company to suspend its section 15(d) reporting obligations regarding certain classes of debt securities? If so, what classes of debt securities should we exclude from the proposed Rule 12h–6 termination process?
- Should we require a foreign company that has terminated its Exchange Act reporting obligations under proposed Rule 12h–6 to resume Exchange Act reporting if it reaches a certain number or percentage of U.S. resident shareholders? If so, what number or percentage of U.S. shareholders should trigger renewed Exchange Act reporting?
- Should we add additional conditions to proposed Rule 12h–6, such as a requirement that the issuer self-tender for securities held by U.S. residents?
- Should proposed Rule 12h–6 require issuers to establish a share-sale facility as a condition to termination of registration, through which U.S. holders of securities would be able to dispose of securities without incurring brokerage or other fees? If so, for what period of time would an issuer be required to maintain such a facility—one month, two months, or longer or shorter?
- How frequently do foreign companies find that, after filing Form 15, the number of their U.S. resident shareholders has increased and exceeds the 300 U.S. resident shareholder threshold?
- How unlikely is it that, once a foreign company has met the proposed Rule 12h–6 criteria and taken the other steps to effect termination of its reporting, U.S. trading or U.S. resident holdings in the subject class of securities would increase to an extent that could justify reimposing Exchange Act reporting obligations? How unlikely is it that, once the number of a foreign private issuer's debt holders drops below 300 persons on a worldwide basis or 300 U.S. residents, the number of its debt holders would increase to an extent that could justify reimposing Exchange Act reporting obligations?

2. Conditions for Equity Securities Registrants

a. The Two Year Exchange Act Reporting Condition

In order to be eligible to terminate its Exchange Act reporting obligations regarding a class of equity securities

[45] For example, a section 15(d) reporting company would have to file a post-effective amendment to terminate the registration of its remaining unsold securities under any of its Securities Act registration statements.

[46] Proposed Rule 12g3–2(e).

[47] Representatives of foreign industry associations have stated that the inflexibility of the current Exchange Act reporting regime is one reason why their member companies are reluctant to list in the United States at the present time. As an example of this inflexibility, these representatives have stated the risk that a foreign company with limited U.S. interest could withdraw from the U.S. market only to become subject to renewed U.S. reporting because U.S. investors have acquired its shares in its home market. See the AFEP letter, dated February 4, 2004, at pp. 3–4.

[48] See Part II.B.4 of this release for a discussion regarding the proposed methodology for counting holders of securities.

under proposed Rule 12h–6, a foreign private issuer must have been an Exchange Act reporting company for the two years preceding its filing of the Form 15F. It also must have filed or furnished all reports required for this period.[49] Proposed Rule 12h–6 would also provide that an issuer must have filed at least two Exchange Act annual reports.[50]

The purpose of this Exchange Act reporting condition is to provide investors in U.S. securities markets with a reasonable period of time to make investment decisions regarding a foreign private issuer's securities based on the information provided in Exchange Act annual reports and the interim home country materials furnished in English under cover of Form 6–K.[51] Without this Exchange Act reporting condition, a foreign private issuer could conduct a U.S. registered offering of equity securities under the Securities Act and then seek to terminate its section 15(d) reporting duties in less than a year, after filing an Exchange Act annual report.[52] The value of securities of a foreign issuer may be discounted, and the level of interest among U.S. investors in such securities may be lowered, if U.S. investors are not confident that the foreign private issuer will be subject to Exchange Act reporting for a sufficient period of time. In addition, without this condition, a foreign private issuer could promote U.S. investor interest in its equity securities by listing on a U.S. stock market and registering a class of securities under section 12(b) or section 12(g), and then shortly thereafter terminate its registration without even filing one Exchange Act annual report. Once a foreign private issuer has elected to list equity securities or otherwise sell equity securities publicly to investors in U.S. securities markets, we believe that the issuer should have to provide Exchange Act reports for a reasonable period of time to enable investors to discern trends about and to otherwise evaluate their investment in the issuer. A balance of prudence against the burden on a foreign private issuer that has attracted limited U.S. investor interest leads us to propose setting this requirement at two years.

Comment Solicited

We solicit comment on the proposed Exchange Act reporting requirement.

- Should we require a foreign private issuer to be an Exchange Act reporting company for a specified period and to have filed or furnished all reports required during that period before it can terminate its reporting obligations regarding a class of equity securities under proposed Rule 12h–6?
- If so, should we set this Exchange Act reporting requirement at two previous years, as proposed?
- Should we require an issuer to have provided two Exchange Act annual reports, as proposed?
- Should we instead adopt a longer reporting period that requires an issuer to have provided at least three Exchange Act annual reports?
- Should we adopt an Exchange Act reporting requirement that covers a shorter period, such as one year, and requires a foreign private issuer to have filed at least one Exchange Act annual report?
- Or should we permit a foreign private issuer to terminate its Exchange Act reporting obligations regarding a class of equity securities under proposed Rule 12h–6 even if it has not yet filed one Exchange Act annual report?
- If we should impose an Exchange Act reporting requirement under proposed Exchange Act Rule 12h–6, should this requirement relate only to annual report filings under the Exchange Act and not to filings or submissions on Form 6–K?
- Should this requirement relate only to specified materials likely to be filed or furnished on Form 6–K (such as annual reports to shareholders, proxy statements and other materials relating to meetings of shareholders, earnings releases, and interim period financial statements), and if so, what should they be?

b. The One Year Dormancy Condition

Proposed Rule 12h–6 would require a foreign private issuer not to have sold any securities in a registered offering in the United States during the preceding 12 months, other than securities sold to its employees and those sold by its selling security holders in non-underwritten offerings, before it could terminate its Exchange Act reporting obligations regarding a class of equity securities. The purpose of this condition is to help ensure that Rule 12h-6 would only be available to a foreign issuer when the U.S. securities markets have relatively little interest and the issuer is not trying to create or take advantage of such interest. A foreign company that has actively engaged in U.S. capital raising efforts and sold securities to U.S. investors relatively recently should not be permitted to exit the Exchange Act reporting regime under Rule 12h-6 on the grounds that the U.S. securities markets no longer represent as viable an option for capital raising.

The proposed ''one year dormancy'' condition would further prevent a foreign company from exiting the Exchange Act reporting system within a year after it has conducted a U.S. registered offering under the Securities Act and garnered investors who are entitled to the protections afforded by our Exchange Act reporting regime. We have excluded from this proposed dormancy period securities sold to a foreign company's U.S. employees, since such sales are undertaken primarily for purposes other than capital formation. Similarly, we have excluded from this proposed dormancy period securities sold by a foreign company's selling security holders in non-underwritten offerings registered under the Securities Act since such sales are not undertaken primarily for the benefit of the issuer.

The proposed condition would also prohibit a foreign company from engaging in unregistered offerings in the United States, other than securities sold to its employees, and securities exempt from registration under section 3 of the Securities Act, except section 3(a)(10), during the previous 12 months.[53] Our reasoning regarding an issuer actively seeking U.S. investors would apply equally to unregistered offerings. In addition, if we only proscribed registered offerings, that condition could act as a disincentive to a foreign private issuer to conduct a registered offering in the United States.

We have generally excluded from the proposed one year dormancy requirement securities exempt from registration under section 3 of the Securities Act[54] because, given their

[49] *See* proposed Exchange Act Rule 12h–6(a)(1).

[50] While typically a foreign private issuer would file its Exchange Act annual report on Form 20–F, one that filed on the domestic Form 10–K or on the MJDS Form 40–F would also potentially qualify for termination under proposed Rule 12h–6.

[51] Under cover of a Form 6–K (17 CFR 249.306), a foreign private issuer is required to furnish in English a copy of any document that it publishes or is required to publish under the laws of its home country or the requirements of its local exchange or that it has distributed to shareholders, and which is material to an investment decision.

[52] For example, without this condition, a foreign private issuer with a calendar year end could complete a Securities Act registered offering late in the year, file its Form 20–F annual report as soon as possible in the following year, and seek termination of its section 15(d) reporting obligations under Rule 12h–6 after only a few months of reporting under the Exchange Act.

[53] This proposed condition would prohibit, for example, offers and sales under section 4(2), Rule 144A and Rules 801 and 802 under the Securities Act. The proposed condition would not prohibit offers and sales effected under Regulation S since such offers and sales, which occur outside the United States, are deemed to fall outside the scope of Securities Act section 5. *See* Securities Act Rule 901 (17 CFR 230.901).

[54] 15 U.S.C. 77c.

exemptive nature and their limited role in capital formation, they do not raise the same concerns as other securities transactions. We also propose to exclude from the prohibition obligations having a maturity at the time of issuance of less than nine months and exempted from registration under section 4(2) of the Securities Act, on the theory that so-called ''4(2) commercial paper'' is analogous for these purposes to commercial paper exempt from registration under section 3(a)(3) of the Securities Act.[55]

However, we have proposed to preclude the issuance of securities pursuant to a court-approved scheme of arrangement under section 3(a)(10) of the Securities Act[56] during the one year dormancy period. Such schemes of arrangement typically possess characteristics of registered offerings, including the solicitation of numerous U.S. resident security holders.

Comment Solicited

We solicit comment on the ''one year dormancy'' condition.

- Is it appropriate to prohibit an issuer from selling securities in the United States for a period preceding its termination of Exchange Act reporting regarding a class of equity securities under Rule 12h–6?
- If so, should we adopt a one year dormancy period, as proposed? Should the period be more than one year, for example, 18 months or two years? Should it be less than one year, for example, three or six months?
- If it is appropriate to adopt a dormancy condition, should it prohibit both registered and unregistered offerings, as proposed? Should it prohibit only registered offerings? If so, why should the rule distinguish between registered and unregistered offerings?
- Should the dormancy condition exclude from its prohibition securities sold to an issuer's employees and those sold by its selling security holders in registered, non-underwritten offerings, as proposed? Should we distinguish between smaller security holders and those who may have control or have other significant interests and sell without ending their relationship with the issuer?
- Should the dormancy condition exclude from its prohibition securities exempted under Securities Act section 3 other than section 3(a)(10), as proposed? Should we exclude from the one year prohibition securities issued under Securities Act section 3(a)(10) as well?
- Should we exclude ''4(2) commercial paper'' from the prohibition, as proposed?
- Are there any other types of securities offerings that should be excluded from the prohibition, for example, rights offers, certain exchange offers, and offers under Securities Act Rule 144A?[57]
- Should the dormancy period for unregistered offerings only extend to equity securities?

c. The Home Country Listing Condition

Proposed Rule 12h–6 would require a foreign private issuer to have maintained a listing of the subject class of equity securities for the preceding two years on an exchange in its home country. As proposed, the term ''home country'' would have the same meaning as under Form 20–F, which defines ''home country'' as the jurisdiction in which the issuer is legally organized, incorporated or established and, if different, the jurisdiction where it has its principal listing.[58]

Proposed Rule 12h–6 would further require that a foreign private issuer's home country constitutes its primary trading market. As proposed, the term ''primary trading market'' would mean that at least 55 percent of the trading in the foreign private issuer's securities took place in, on or through the facilities of a securities market in a single foreign country during a recent 12 month period.[59] Proposed Rule 12h–6 would define ''recent 12 month period'' to mean a 12 calendar month period that ended no more than 60 days before the filing date of the Form 15F.[60]

The purpose of this condition is to provide for a non-U.S. jurisdiction that principally regulates and oversees the issuance and trading of the issuer's securities and disclosure obligations by the issuer to its investors. If the United States was the sole or principal market for the foreign private issuer's securities, then the Commission would have a greater regulatory interest in continuing to subject the foreign company to the Exchange Act reporting regime. In contrast, if 55 percent or more of the average daily trading volume of the company's securities occurred through the facilities of its home country securities market, then there is a greater likelihood that the principal pricing determinants for the company's securities are within the jurisdiction of its home country regulator.[61] There also is a greater likelihood that the foreign company will be subject to a body of reporting and other securities regulatory requirements in its home jurisdiction. Consequently, for a company meeting these requirements, there should be less interruption in the flow of material information about the company once it exits the Exchange Act reporting system.

Comment Solicited

We solicit comment on the proposed ''home country listing'' condition.

- Should we require that a company have maintained a listing of the subject class of equity securities on an exchange in its home country for the last two years, as proposed?
- Do other countries have markets or facilities that are not an ''exchange''? If so, should the listing requirement be satisfied by means of quoting the subject class of securities on foreign markets operated other than as an exchange?
- Should we impose a home country listing requirement that is shorter than two years, say, one year? Should we impose a home country listing requirement that is longer than two years? Should we not impose a home country listing requirement at all?
- Should the Commission's rule be sensitive to particular characteristics of the listing market or the home country? If so, how should this be accomplished?
- Should we require that a foreign private issuer represent that it is in compliance with the rules of, or otherwise in good standing with, its home country securities regulator or listing authority?
- Should we require that a foreign private issuer's home country constitutes its primary trading market, as proposed?
- If so, should we require that 55 percent or more of the average daily

[55] 15 U.S.C. 77c(a)(3).

[56] Foreign private issuers have frequently relied on Securities Act section 3(a)(10) to effect acquisitions and corporate restructurings. *See, for example, Anglogold Limited* no-action letter (January 15, 2004) and *Constellation Brands, Inc.* no-action letter (dated January 29, 2003). Section 3(a)(10) exempts from Securities Act registration securities issued in an exchange pursuant to terms that have been approved by a court or other governmental authority following a hearing regarding their fairness in which all interested parties have been given an opportunity to be heard. The exemption does not apply to securities issued in a U.S. federal proceeding under Title 11 of the United States Code.

[57] 17 CFR 230.144A.

[58] *See* Form 20–F General Instruction F.

[59] Proposed Rule 12h–6(d)(6). We similarly used ''55 percent of trading through the securities market facilities of a single foreign country'' as one of the benchmarks for determining whether there is substantial U.S. market interest for a foreign private issuer's securities under Regulation S. *See* Securities Act Rule 902(j)(1)(ii) (17 CFR 230.902(j)(1)(ii)).

[60] Proposed Rule 12h–6(d)(7).

[61] This ''primary trading market'' requirement would also help ensure that an issuer's foreign listing represents a significant trading market for its equity securities rather than a listing on a non-trading market such as the Luxembourg Stock Exchange.

trading volume of a foreign company's securities occurred through the facilities of a single foreign country securities market during a recent 12 month period, as proposed?

• Should we require that a higher percentage, for example, 60 or 75 percent or a lower percentage, for example, 50 percent of the average daily trading volume of a foreign company's equity securities occurred through the facilities of its home country securities market during a recent 12 month period?

• Should we permit a foreign company to terminate its Exchange Act reporting obligations regarding a class of equity securities if the percentage of the average daily trading volume of its securities that occurred in its home country market is less than 50 percent as long as that percentage when aggregated with the percentage of the average daily trading volume of the company's securities occurring in another non-U.S. jurisdiction was at least 55 percent or some other percentage greater than 55 percent? Would another test better accomplish the goals of the home country listing condition?

• Should we adopt the definition of ''recent 12 month period'', as proposed?

Should we adopt a period that is longer or shorter than 12 months?

• Should we adopt the 60-day window to the 12 month period, as proposed?

Should the window be longer or shorter than 60 days?

d. Public Float and Trading Volume Benchmarks

Proposed Rule 12h–6 would next permit a foreign private issuer to meet one of a set of quantitative conditions designed to measure the relative level of U.S. market interest in a foreign company's equity securities, and which is not based on a record holder count. The particular condition applicable to a foreign company would depend upon whether the foreign company met the definition of a well-known seasoned issuer under Rule 405 of the Securities Act.[62]

If the issuer is a well-known seasoned issuer, and the average daily trading volume of the subject class of equity securities in the United States has been 5 percent or less of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, then the foreign company would be eligible to terminate its Exchange Act registration and reporting obligations under proposed Rule 12h–6 as long as U.S. residents held no more than 10 percent of the class of company's outstanding voting and non-voting equity securities, regarding which there is an Exchange Act reporting obligation, held by the company's non-affiliates on a worldwide basis (''worldwide public float'') at a date within 60 days before the end of the same 12 month period.[63] Otherwise, a foreign private issuer that is a well-known seasoned issuer could terminate its Exchange Act registration and reporting obligations under proposed Rule 12h–6 regarding a class of equity securities if its U.S. resident shareholders held no more than 5 percent of the company's worldwide public float at a date within 120 days before the filing date of the Form 15F.[64]

A foreign company that is not a well-known seasoned issuer could terminate its Exchange Act registration and reporting under proposed Rule 12h–6 if U.S. residents held no more than 5 percent of the company's worldwide public float at a date within 120 days before the filing date of the Form 15F, regardless of its U.S. trading volume.[65]

One of the principal reasons that we are proposing to replace the current standard for a foreign private issuer's termination of reporting, which rests solely on a ''300 U.S. holder'' benchmark (or ''500 U.S. holder'' benchmark for companies with $10 million or less in assets), with benchmarks based upon, among other things, relative U.S. ownership of a foreign company's worldwide public float, is that the proposed benchmarks should liberalize a foreign private issuer's exiting of the Exchange Act registration and reporting regime. At the same time, the proposed benchmarks should work with the other proposed conditions to permit a foreign private issuer to exit the Exchange Act registration and reporting regime only when the impact of the issuer's termination of reporting on the U.S. investor community is expected to be low.

Our expectation that the proposed benchmarks will liberalize exiting the Exchange Act reporting regime for foreign private issuers arises from an evaluation of data developed by our staff in the Division of Corporation Finance and the Office of Economic Analysis regarding the number of foreign private issuers that would be eligible to deregister under the proposal. The staff developed a database of 510 foreign private issuers for which data was sufficient to make the necessary calculations.[66] The data show that approximately 26% of these foreign private issuers would be eligible to deregister under the proposals.[67] The breakdown of that 26% is as follows:

• Well-known seasoned issuers with 5% or less U.S. trading volume and 10% or less U.S. ownership—26% of WKSIs or 16% of total;

• Well-known seasoned issuers with more than 5% U.S. trading volume and 5% or less U.S. ownership—8% of WKSIs or 5% of total; and

• Other issuers with 5% or less U.S. ownership—15% of other issuers or 5% of total.

The proposed benchmarks do not take a ''one size fits all'' approach. Although any foreign private issuer may meet the public float condition if U.S. residents hold 5 percent or less of the issuer's worldwide public float, we have proposed an additional benchmark for a foreign company that is a well-known seasoned issuer. For the following reasons, we believe that a well-known seasoned issuer that is at or below the proposed U.S. trading volume threshold should be able to exit the registration and reporting system under Rule 12h–6 even though the percentage of its worldwide public float held by U.S. investors is greater than the public float benchmark applied to a non-well-known seasoned issuer.

It is more likely that a very large, well-followed foreign company will have a greater percentage of its shares held by U.S. residents than smaller foreign companies. Large companies, including those that are foreign private issuers, are included in various securities indices that are tracked by many U.S. institutional investors. Thus, a large foreign company may especially find it unduly difficult to terminate its Exchange Act reporting obligations, despite the lack of recent U.S. securities offerings and other transactions by that company, because a significant portion of its public float continues to be held by index-based U.S. investors.

In addition, in order to satisfy investor interest around the world as

[62] Proposed Rules 12h–6(a)(4) and 12h–6(a)(5).

[63] Proposed Rule 12h–6(a)(4)(i). The combination of the 60-day period for calculating trading volume percentage and the 60-day period for calculating U.S. percentage ownership would in effect generally provide a 120-day window for calculating percentage ownership.

[64] Proposed Rule 12h–6(a)(4)(ii).

[65] Proposed Rule 12h–6(a)(5).

[66] Of the 510 foreign private issuers, 320 were WKSIs and 190 were non-WKSIs.

[67] Because the counting rules that we propose, discussed below, are not currently in use, these figures may be conservative, although they may overstate the effect of the proposed conditions to the extent that issuers perceive themselves to be already eligible to terminate their Exchange Act registration and reporting obligations under the current record holder standard in Rules 12g–4 and 12h–3.

well as home country requirements, large foreign companies are more likely to provide a steady flow of financial and non-financial information that is easily accessible. Because of their extensive market following, this information is more likely to be the subject of analysis and comment. After a large foreign company's termination of Exchange Act reporting under proposed Rule 12h–6, it is likely that both this steady flow of information from the company and the ensuing analysis will continue, to the benefit of U.S. and other investors.

Although some foreign company representatives have proposed using a benchmark based solely on trading volume as the determinant of a foreign private issuer's ability to exit the Exchange Act reporting regime, we have declined to do so.[68] A benchmark based solely on trading volume could result in an inaccurate gauge of U.S. investor interest. For example, some U.S. investors, particularly large institutional investors, are more likely to purchase and sell securities of foreign well-known seasoned issuers and other foreign companies through foreign markets rather than U.S. markets. These U.S. investors may look to the information contained in a foreign private issuer's Exchange Act reports when investing in the foreign private issuer's home market. A benchmark based solely on U.S. trading volume as a percentage of worldwide trading volume would not capture these U.S. investors and, therefore, would understate the degree of U.S. interest in a foreign company's securities.

Moreover, some economists have noted that various securities markets measure trading volume differently. Accordingly, adoption of a benchmark that relies only on trading volume could result in overstating the trading volume of a particular foreign company's securities either in its home country or the United States.[69] Reliance solely on trading volume could also induce attempts to affect the trading volume of a foreign private issuer's securities in global markets in order to affect the determination of whether the issuer could exit the U.S. reporting system.

As U.S. trading volume increases as a percentage of the trading volume of a foreign company's securities in its primary trading market, so does the concern that U.S. investor interest in that foreign company's securities may be large enough to warrant establishing a stricter ownership threshold before the company could exit the Exchange Act reporting regime. In order to mitigate this concern, under the rule proposal, if a foreign well-known seasoned issuer has a U.S. average daily trading volume that is greater than 5 percent of its average daily trading volume in its primary trading market for a class of securities, it must have a smaller percentage of its worldwide public float held by U.S. investors than a foreign well-known seasoned issuer that has a U.S. average daily trading volume below 5 percent of its average daily trading volume in its primary trading market.

We have not proposed a similar benchmark based on trading volume for non-well-known seasoned issuers because, based on our review of data for non-well-known seasoned issuers, it does not appear that U.S. trading volume as a percentage of worldwide trading volume is a dispositive factor that would permit a significant number of these smaller issuers to terminate their Exchange Act registration and reporting under proposed Rule 12h–6. Instead we have proposed to permit a smaller foreign company to rely on the percentage of its worldwide public float held by U.S. investors as the primary benchmark governing whether it may terminate its Exchange Act registration and reporting.[70]

In proposing these benchmark conditions, we believe that a foreign company that meets any of them is more likely to be one for which the protections afforded by the Exchange Act registration and reporting regime are no longer justified in light of the costs and burdens borne by the company in complying with that regime. We hold this view because the benchmarks suggest that the relative interest of U.S. investors in the foreign private issuer's securities would be low. Moreover, for such a foreign company, the U.S. securities markets would generally have played little role in determining the prevailing price of its equity securities in world markets. Consequently, once such a foreign company has exited the Exchange Act reporting system, there should be little disruption in the information flow relating to, and the global pricing of, its securities. U.S. investors would be able to look to a foreign company's primary trading market should they desire to trade the company's equity securities in an established securities market once it has exited the Exchange Act reporting system.[71]

A Canadian issuer that files its Exchange Act annual report on Form 40–F under the MJDS would be eligible to terminate its Exchange Act registration and reporting obligations under proposed Rule 12h–6. However, because a MJDS filer is not eligible to be a well-known seasoned issuer as defined under Rule 405 of the Securities Act, a MJDS filer would not be able to proceed under the well-known seasoned issuer provisions of proposed Rule 12h–6.[72] However, a MJDS filer could take advantage of the non-WKSI conditions regarding a class of equity securities and the debt securities provision of proposed Rule 12h–6.

Comment Solicited

We solicit comment on the proposed U.S. trading volume and public float benchmarks. In particular, we solicit comment on the trading volume and ownership information developed by Commission staff and our conclusions derived from them, as discussed in this section, and also solicit additional information regarding trading volume and ownership data.

- Should we adopt a termination of reporting condition for well-known seasoned issuers that relies on two measures—trading volume and public float—as proposed?
- If not, should we adopt a benchmark that uses just trading volume, public float, or some other measure?
- Does the potential for manipulation of trading volume make it an inappropriate benchmark, either alone or in combination with other benchmarks?
- Should we instead adopt a benchmark that uses some combination of measures excluding trading volume?

[68] Some foreign company representatives have suggested an exit rule based solely on a foreign company's U.S. trading volume as a percentage of its global trading volume. According to these representatives, if the U.S. trading volume of a foreign company's securities were to fall below a specified percentage of its global trading volume, that would signify that the U.S. market is not a determinative factor in the pricing of the company's securities. As a result, little disruption should occur in the global market for the company's securities once the company ceases to provide its Exchange Act reports. *See* the AFEP letter, dated March 18, 2005, at p. 4. Although we do not believe that a termination benchmark should be based solely on trading volume for the reasons discussed, it appears appropriate to use it as part of an overall assessment of U.S. market interest in a foreign private issuer's equity securities.

[69] *See, for example,* Anne-Marie Anderson and Edward A. Dyl, ''Market Structure and Trading Volume,'' *The Journal of Financial Research,* Vol. XXVIII, No. 1, pp.115–131 (Spring 2005).

[70] Both a smaller foreign company and a WKSI may also rely on proposed Rule 12h–6(a)(6), which uses a ''300 record holder'' standard, as discussed below.

[71] As discussed in Part II.C of this release, following a foreign private issuer's termination of reporting under proposed Rule 12h–6, its securities, including its ADRs, could be traded in the unlisted over-the-counter market in the United States.

[72] *See* question 16 of the Securities Offering Reform FAQ located at *http://www.sec.gov/divisions/corpfin/faqs/securities_offering_reform_qa.pdf.*

• For example, should we adopt a condition requiring a foreign well-known seasoned issuer to have U.S. residents holding no more than a specified percentage, say 10 percent or 5 percent of its worldwide public float at the end of a recent 12 month period, and having U.S. resident shareholders numbering no greater than 1,000, 2,000, 3,000 or some other number? Should we adopt a similar condition for non-well-known seasoned issuers?

• Should we adopt a benchmark that requires a foreign private issuer to have a specified U.S. public float expressed in dollars rather than as a percentage of the issuer's worldwide public float?

• Should we adopt a benchmark that excludes using public float?

• Should we adopt one set of conditions for well-known seasoned issuers and another for foreign companies that are not well-known seasoned issuers, as proposed? Should we instead have one set of conditions that applies to all?

• Proposed Rule 12h–6 would use the same definition of well-known seasoned issuer as under Securities Act Rule 405. That definition contains various conditions in addition to the $700 million public float requirement. Should proposed Rule 12h–6 incorporate all of those conditions or just some of them?

• A company that is an ''ineligible issuer'' under Securities Act Rule 405 does not qualify as a well-known seasoned issuer. Should we require an ''ineligible issuer'' to meet the more stringent benchmarks under Rule 12h–6, as proposed?

• Should we preclude a MJDS filer from using the well-known seasoned issuer benchmarks, as proposed? Should we instead allow a MJDS filer to proceed under the well-known seasoned issuer benchmarks as long as it meets the $700 million public float requirement?

• Should the date of determination of well-known seasoned issuer status be a date within 120 days of filing the proposed Form 15F, as proposed?

• Should we use the ''well-known seasoned issuer'' definition at all as the basis for making distinctions between foreign private issuers regarding termination of reporting? Should we instead use the definition of ''large accelerated filer'', which we are adopting in a separate release? [73]

• Should we develop another measure based on a higher public float (for example, $1 billion) or a lower public float (for example, $500 billion)?

Should we rely on a $75 million public float threshold, which we have previously used as a benchmark for eligibility to engage in certain U.S. securities transactions?[74]

We encourage commenters in this area specifically to support the use of other thresholds with information about a foreign private issuer's market following. With respect to trading volume information, the proposed rule would require a comparison between the United States and the issuer's primary trading market.

• Should we require the comparison of trading volume information in the United States with worldwide trading volume information instead of solely with trading volume information in the issuer's primary trading market?

• Do many foreign well-known seasoned issuers have significant trading volume activity in two or more markets, other than the United States, so that a benchmark based on U.S. trading volume as a percentage of worldwide trading volume would be more meaningful?

• Are many foreign well-known seasoned issuers subject to home country reporting standards that require disclosure of worldwide trading volume information? If so, should proposed Rule 12h–6 use worldwide trading volume information instead of primary trading market information as well?

• Should we adopt alternative conditions for a foreign well-known seasoned issuer depending upon whether the U.S. average daily trading volume of a foreign company's class of securities is no greater than 5 percent of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, as proposed? Should the threshold percentage instead be larger than 5 percent? Should it be smaller than 5 percent?

• Should we adopt a different period than a ''recent 12 month period''? For example, should we adopt a period that is longer than 12 months, say 18 or 24 months? Should we adopt a period that is shorter than 12 months, for example, 6 or 3 months?

• Should we adopt the dual 60-day windows for determining U.S. trading volume and U.S. percentage of ownership? Should the periods be longer or shorter?

• If we should adopt the proposed ''5 percent of primary trading market trading volume'' benchmark, should we also adopt the condition that a well-known seasoned issuer that meets this trading volume benchmark must have U.S. residents holding no more than 10 percent of the foreign company's worldwide public float at the end of the recent 12 month period, as proposed?

• Should we instead adopt a percentage that is greater than 10 percent, for example, 15 or 20 percent? Should we adopt a percentage that is less than 10 percent, for example, 5 or 7 percent?

• Similarly, should we adopt the condition that would permit a well-known seasoned issuer to terminate its Exchange Act reporting obligations as long as U.S. residents held no more than 5 percent of its worldwide public float at a date within 120 days of the filing date of the Form 15F even if its U.S. average trading volume was greater than 5 percent of the average trading volume in its primary trading market, as proposed?

• Should we instead adopt a public float percentage that is larger than 5 percent, for example, 7, 10 or 15 percent, or smaller than 5 percent, for example, 3 percent?

• Should we adopt the condition permitting a foreign company that is not a well-known seasoned issuer to terminate its Exchange Act reporting obligations as long as U.S. residents held no more than 5 percent of its worldwide public float at a date within 120 days of the filing date of the Form 15F, regardless of its U.S. trading volume, as proposed?

• If not, should we adopt a public float percentage that is greater than 5 percent, for example, 7 or 10 percent, or less than 5 percent, for example, 3 percent?

We have proposed a single benchmark for non-well-known seasoned issuers based on the proportion of U.S. residents who hold their securities.

• Should we adopt dual benchmarks, based on trading volume and U.S. ownership, similar to the dual benchmarks proposed for well-known seasoned issuers?

• Does a single benchmark provide an adequate measure in determining when a non-well-known seasoned issuer may terminate its Exchange Act reporting obligations under the proposed scheme, or would dual benchmarks provide a more refined classification that is supported by data and experience?

• For example, should we adopt a condition that permits a non-well-known seasoned issuer to terminate its Exchange Act registration and reporting obligations if the U.S. average daily trading volume of its class of securities is no greater than a certain percentage,

[73] *See* Release No. 33–8644, 34–52989 (December 21, 2005).

[74] For example, a public float of $75 million is the eligibility threshold that a foreign private issuer must meet to use Form F–3 for a primary issuance of securities. *See* General Instruction I.B.1 to Form F–3.

say 5 percent, of the average daily trading volume of that class of securities in its primary trading market during a recent 12 month period, and U.S. residents held no more than 5 percent of its worldwide public float at a date within 60 days of that recent 12 month period?

• If so, should either of the U.S. trading volume or U.S. public float thresholds be larger or smaller than 5 percent?

e. Alternative Threshold Record Holder Condition

Proposed Rule 12h–6(a)(6) would permit a foreign private issuer that could not meet one of the benchmarks in proposed Rule 12h–6(a)(4) or (5), but met the other conditions of the rule, to terminate its Exchange Act registration and reporting obligations with regard to a class of equity securities as long as that class of securities was held of record by less than 300 persons on a worldwide basis or less than 300 U.S. residents at a date within 120 days before the filing date of the Form 15F. This threshold record holder condition is similar to that found in current Rules 12g–4 and 12h–3. Those rules also permit a foreign private issuer to cease its reporting obligations if the class of securities is held by less than 500 persons on a worldwide basis or by less than 500 U.S. residents where the issuer's total assets have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.[75] We have not proposed a similar 500 record holder condition because, based on current experience, we believe that foreign private issuers seldom use the current standard.

The purpose of this 300 record holder condition is to provide that the new exit rules for a foreign private issuer are no more rigorous than the current rules. A foreign private issuer that cannot meet one of the proposed benchmarks, but is eligible under the current 300 record holder standard, should be allowed to terminate its Exchange Act registration and reporting, assuming that it meets the other conditions of proposed Rule 12h–6(a).

Although similar to the current standard, the proposed alternative threshold record holder condition would offer advantages compared to the current exit rules. As discussed below, proposed Rule 12h–6 would adopt a counting method that limits the jurisdictions in which a foreign private issuer must search for records of its U.S. resident holders.[76] Moreover, in addition to enabling a foreign private issuer to terminate, rather than merely suspend, its section 15(d) reporting obligations regarding a class of securities, proposed Rule 12h–6 would impose a prior Exchange Act reporting requirement that is potentially shorter than that under current Rule 12h–3.[77]

Given these advantages, if proposed Rule 12h–6 is adopted, we believe that few, if any, foreign private issuers would choose to proceed under the provisions of Rule 12g–4 or Rule 12h–3 that allow a foreign private issuer to terminate its registration of a class of securities under section 12(g) or suspend the duty to file reports under section 15(d) if the class of securities is held by less than 300 U.S. residents or by 500 U.S. residents and the issuer has had total assets not exceeding $10 million on the last day of each of its most recent three fiscal years.[78] Accordingly, we are proposing to amend these rules to eliminate the above provisions.

Comment Solicited

We solicit comment on proposed Rule 12h–6(a)(6).

• Should we permit an issuer that cannot meet the proposed benchmarks in proposed Rule 12h–6(a)(4) or (5) to terminate its Exchange Act registration and reporting as long as it has satisfied the other requirements of proposed Rule 12h–6 and has its class of equity securities held of record by less than 300 persons worldwide or by less than 300 U.S. resident holders, as proposed?

• Should we raise the record holder threshold to 500, 600, 750, 1,000 or some other number?

• Should we adopt a record holder threshold that is higher for a well-known seasoned issuer than a non-well-known seasoned issuer?

• Should we require a minimum total assets threshold in addition to a record holder threshold as under current Rules 12g–4 and 12h–3? For example, should we adopt the ''less than 500 U.S. residents and $10 million asset'' standard currently provided under Rules 12g–4 and 12h–3? If so, should we require that the asset test be met for only the registrant's most recently completed fiscal year or for two or more previous years?

• Should we adopt an asset threshold that is more than $10 million, for example, $25, 50, 75, or 100 million? In conjunction with an assets test, should we adopt a record holder threshold that is greater than 500, for example, 750, 1,000, 2,000, or 3,000?

• Should we amend Rules 12g–4 and 12h–3 to eliminate the provisions permitting a foreign private issuer to cease its reporting obligations, as proposed? Should we retain these provisions in addition to adopting proposed Rule 12h–6?

3. Conditions for Debt Securities Registrants

a. Section 15(d) Reporting Requirement

Proposed Rule 12h–6 would require a foreign private issuer to meet the minimum Exchange Act reporting requirement under section 15(d) before it could terminate its section 15(d) reporting obligations regarding a class of debt securities.[79] Under section 15(d), an issuer cannot suspend its Exchange Act reporting obligations even if its record holders have fallen below 300 during the year in which the Securities Act registration statement that triggered the section 15(d) reporting obligations became effective. Consequently, section 15(d) requires that, at a minimum, a foreign private issuer must file one annual report pursuant to section 13, and furnish Form 6–K reports until it has filed that one annual report, before it can effect a suspension based upon the number of its record holders.

Proposed Rule 12h–6 would impose this minimum reporting requirement on a debt securities registrant rather than a longer period, as would be required for an equity securities registrant, in order to prevent the new exiting standard from being more burdensome than is currently the case for debt securities registrants under section 15(d). Because debt securities offerings typically result in fewer securities holders than equity securities offerings, it is generally easier for a debt securities registrant to fall below the 300 record holder threshold. Consequently, on several occasions, debt securities registrants have filed Form 15 to suspend their section 15(d) reporting obligations after having filed only one Exchange Act annual report. Proposed Rule 12h–6 would permit this practice to continue.

Comment Solicited

We solicit comment on proposed Rule 12h–6's Exchange Act reporting

[75] Exchange Act Rules 12g–4(a)(1)(ii) and (a)(2)(ii) (17 CFR 12g–4(a)(1)(ii) and (a)(2)(ii)) and 12h–3(b)(1)(ii) and (b)(2)(ii) (17 CFR 240.12h–3(b)(1)(ii) and (b)(2)(ii)).

[76] *See* Part II.B.4 of this release.

[77] Rule 12h–3(a) requires a company that has been an Exchange Act reporting company for at least three fiscal years to have filed all Exchange Act reports for those three years and for the portion of the current year preceding the filing of the Form 15. Proposed Rule 12h–6 would only require an issuer to have filed all required reports for a prior two year period, and have filed two Exchange Act annual reports.

[78] *See* Exchange Act Rules 12g–4(a)(2) and 12h–3(b)(2).

[79] *See* proposed Rule 12h–6(b)(1).

requirement for debt securities registrants.

• Should we permit a foreign private issuer to terminate its section 15(d) reporting obligations regarding a class of debt securities after filing only one Exchange Act annual report and furnishing Form 6–Ks only up to the filing of that annual report, as proposed? Should we require a debt securities registrant to file at least two annual reports and furnish Form 6–Ks until it has filed its second annual report, as we have proposed to require for an equity securities registrant, before it can terminate its section 15(d) reporting obligations?

• Should we permit a foreign private issuer only to suspend rather than terminate its section 15(d) obligations regarding certain classes of debt securities? If so, what are those classes of debt securities?

b. Threshold Record Holder Condition

Proposed Rule 12h–6 would require the record holders of a foreign private issuer's debt securities to be either less than 300 persons on a worldwide basis or less than 300 U.S. residents as of a date within 120 days before the filing of the Form 15F.[80] As with the alternative threshold record holder condition for equity securities registrants, we have based these thresholds on current statutory and rule conditions governing an issuer's suspension of reporting under section 15(d).[81] Accordingly, the proposed record holder condition for termination of a debt securities registrant's reporting obligations would in most instances not pose any additional burdens.

Rule 12h–3 alternatively permits a foreign private issuer to suspend its section 15(d) reporting obligations if its class of debt securities is held of record by less than 500 U.S. residents and its total assets have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years.[82] We have not proposed to adopt this alternative condition for a debt securities registrant under proposed Rule 12h–6 because we believe that most foreign private issuers that are debt securities registrants would likely exceed that asset threshold.[83]

For purposes of Rule 12h–6, the term ''debt securities'' refers not only to traditional debt securities but also to non-convertible preferred securities, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer (referred to as ''non-participating preferred stock''). The preferred securities have market characteristics more similar to traditional debt securities than to equity securities. This treatment of non-participating preferred stock under Rule 12h–6 is consistent with the treatment under other rules under the Federal securities laws.[84]

Comment Solicited

We solicit comment on proposed Rule 12h–6's threshold record holder condition for debt securities registrants.

• Should we require that the subject class of debt securities be held of record by less than 300 persons on a worldwide basis or less than 300 U.S. residents, as proposed?

• Should we increase the record holder threshold to, for example, less than 500, 750 or 1,000 persons on a worldwide basis or who are U.S. residents?

• If we do increase the threshold number of record holders, should we also impose a threshold asset standard? Should we adopt the ''less than 500 U.S. residents and $10 million asset'' standard currently provided under Rule 12h–3? If so, should we require that the asset test be met for only the registrant's most recently completed fiscal year?

• Should we adopt an asset threshold that is more than $10 million, for example, $25, 50, 75, or 100 million? If so, should we adopt a record holder threshold as well that is greater than 500?

• Should we instead adopt a record holder condition that would vary depending on whether a debt securities registrant was a well-known seasoned issuer?

We also solicit comment on the definition of debt securities under proposed Rule 12h–6.

• Should we treat as debt securities non-participating preferred securities, as proposed?

• Are there any other types of debt securities that should be included or excluded from the proposed definition of debt securities?

4. Counting Method

In order to facilitate a foreign private issuer's determination regarding whether U.S. residents hold no more than the applicable threshold percentage of its worldwide public float, or whether the number of its equity or debt securities record holders meet the applicable threshold condition, proposed Rule 12h–6 would permit an issuer to use a method of calculating record ownership that is substantially similar to that we have adopted under the exemptive rules for cross-border rights offerings, exchange offers and business combinations,[85] as well as under the definition of foreign private issuer.[86] After instructing an issuer to use the method of calculating record ownership under Rule 12g3–2(a),[87] proposed Rule 12h–6(e) would provide that an issuer may limit its inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in the United States, the foreign private issuer's jurisdiction of incorporation, legal organization or establishment, and the jurisdiction of the foreign private issuer's primary trading market if different from the issuer's jurisdiction of incorporation, legal organization or establishment.[88]

The purpose of this provision is to limit the number of jurisdictions in which an issuer must search for records regarding its U.S. resident shareholders. The rule would permit an issuer to restrict its search to those jurisdictions that represent the most probable locations for brokers, dealers, banks and other nominees to hold the issuer's securities on behalf of U.S. customers.[89]

[80] *See* proposed Rule 12h–6(b)(2).

[81] The ''less than 300 persons'' standard appears both in section 15(d) and in Rule 12h–3(b)(1)(i) (17 CFR 240.12h–3(b)(1)(i)). The ''less than 300 U.S. residents'' standard appears in Rule 12h–3(b)(2)(i) (17 CFR 240.12h–3(b)(2)(i)). *See* Part II.B.4 of this release for a discussion of proposed modifications in the method of counting U.S. residents.

[82] Exchange Act Rule 12h–3(b)(2)(ii).

[83] A foreign private issuer could still seek to suspend its section 15(d) reporting obligations under Rule 12h–3's alternative provision, which applies to any issuer, and which imposes the same asset standard but requires the subject class of securities to be held of record by less than 500 persons on a worldwide basis. *See* Exchange Act Rule 12h–3(b)(1)(ii).

[84] *See, for example,* Securities Act Rule 902(a)(1) under Regulation S (17 CFR 230.902(a)(1)).

[85] Securities Act Rule 800(h) (17 CFR 230.800(h)).

[86] Securities Act Rule 405 and Exchange Act Rule 3b–4. The Regulatory Flexibility Act Agenda most recently published by the Commission states that Commission staff are considering recommendations with respect to rule amendment proposals relating to the definition of securities ''held of record'' under the Exchange Act. Release 33–8608 (September 2, 2005), 70 FR 65680 (October 31, 2005). Today's proposals relating to foreign private issuers are unrelated to that consideration.

[87] 17 CFR 240.12g3–2(a). Used to determine whether a foreign private issuer has fewer than 300 U.S. resident holders, that method requires looking through the record ownership maintained by brokers, dealers, banks or other nominees and counting the number of separate accounts held by them on behalf of U.S. customers.

[88] Proposed Rule 12h–6(e)(1).

[89] This counting method would not apply to a foreign private issuer that is terminating its reporting because its equity or debt securities record holders are less than 300 persons on a worldwide basis. Like the current 300 worldwide

Continued

Proposed Rule 12h–6(e) would further provide that, if, after reasonable inquiry, an issuer is unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, it may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business. However, the proposed rule would further instruct that an issuer must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to the issuer indicates that the securities are held by U.S. residents.[90]

We are aware that domestic and foreign issuers use third party service providers for the purpose of obtaining information relating to the identification of their security holders. In general, the primary purpose of obtaining this information is usually not to satisfy a regulatory requirement, but to assist company management in communicating with security holders and otherwise to promote good investor relations. Nonetheless, foreign private issuers currently use these services for the purpose of determining whether they fall below the current 300 U.S. holder threshold.

In light of the difficulties associated with determining levels of U.S. ownership of securities, we believe it is appropriate to permit foreign private issuers to rely on a third party information service provider that is in the business of supplying security holder information to issuers generally. Accordingly, proposed Rule 12h–6(e) would provide that, when calculating the number of its U.S. resident security holders under proposed Rule 12h–6, a foreign private issuer could rely in good faith on the assistance of an independent information services provider that in the regular course of business assists issuers in determining the number of, and collecting other information regarding, their shareholders.[91] By allowing a foreign private issuer to retain an expert when making the determination of the extent to which its securities are held by U.S. residents, this proposed provision should help increase the accuracy of that determination while reducing the burden posed by it for the issuer and its employees.

Comment Solicited

We solicit comment on proposed Rule 12h–6(e).

- Should we permit an issuer to restrict its inquiry regarding the number of its U.S. resident holders to the jurisdictions referenced in that rule, as proposed?
- Are there other jurisdictions in which an issuer must search for evidence of U.S. ownership of its securities when calculating the percentage of its worldwide public float held by U.S. holders or the number of U.S. residents who hold its equity or debt securities under proposed Rule 12h–6?
- Is there another method of accurately determining the percentage of an issuer's worldwide public float held by U.S. residents that does not require using the counting method in Rule 12g3–2(a)?
- Should we permit a foreign private issuer to exclude institutional investors when determining the number of its U.S. resident shareholders?
- Should we permit a foreign private issuer to rely in good faith on the assistance of an independent information services provider when making its public float determination or calculating the number of U.S. residents who hold its equity or debt securities, as proposed? Should we also allow an issuer to rely on an information services provider when calculating the number of its record holders worldwide?

We understand that some foreign jurisdictions have laws that provide an established and enforceable means for a public company to obtain information about their shareholders.[92]

- Should we allow a foreign private issuer to rely on information obtained through these foreign statutory or code provisions when calculating the percentage of its worldwide public float held by U.S. residents or the number of its U.S. resident equity or debt holders? If so, should we permit reliance on only certain specified foreign provisions?

Interested persons are requested to provide detailed information about such foreign provisions in their comments.

5. Form 15F

Like our current exit rules, proposed Rule 12h–6 would require a foreign private issuer to file a form certifying that it meets the requirements for ceasing its Exchange Act reporting obligations. By signing and filing proposed new Form 15F,[93] a foreign private issuer would be certifying that:

- It meets all of the conditions for termination of Exchange Act reporting specified in Exchange Act Rule 12h–6 (17 CFR 240.12h–6); and
- There are no classes of securities other than those that are the subject of the Form 15F regarding which the issuer has Exchange Act reporting obligations.

Unlike current Form 15, proposed new Form 15F would require a foreign private issuer to provide disclosure regarding several items in order to provide investors with information regarding an issuer's decision to terminate its Exchange Act reporting obligations. That information would also help Commission staff to assess whether the issuer meets the requirements for termination of reporting under Rule 12h–6. We believe that this disclosure approach is appropriate because of the multiple conditions that a foreign company would have to meet under proposed Rule 12h–6. Moreover, some of the proposed conditions, such as the trading volume and public float benchmarks, have not previously been the subject of mandatory disclosure under our Exchange Act reporting regime. Accordingly, without the proposed Form 15F items, investors would not be informed about, and Commission staff would not be able to assess readily, whether a foreign company was eligible to terminate its reporting under proposed Rule 12h–6.

The proposed Form 15F items would solicit information regarding:

- An issuer's Exchange Act reporting history;
- When it last sold securities in the United States other than those excluded from consideration under proposed Rule 12h–6;
- The primary trading market for its equity securities being deregistered;
- Whether it is a well-known seasoned issuer;
- Trading volume data for a well-known seasoned issuer's securities, both in the United States and in its primary trading market;
- Its worldwide public float and the portion held by U.S. residents

record holder provisions under Rules 12g–4 and 12h–3, proposed Rule 12h–6's worldwide record holder provisions would generally not require an issuer to look through nominee accounts when determining its record ownership.

[90] Proposed Rule 12h–6(e)(2) and (3).

[91] Proposed Rule 12h–6(e)(4).

[92] *See, for example,* Section 212 of the Companies Act of the United Kingdom, which gives a public company the power to investigate the ownership of its shares by sending a written notice to any person or company whom it believes has or had an interest in its relevant share capital during the preceding three years.

[93] An issuer would have to file proposed Form 15F through the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR''). *See* the proposed amendment to Regulation S–T Rule 101(a)(1)(xii) (17 CFR 232.101(a)(1)(xii)), which would also clarify that, as currently interpreted by the Commission, Regulation S–T also requires an issuer to file a Form 15 on EDGAR.

determined pursuant to the proposed rules with respect to the equity securities being deregistered, if applicable;

- The number of its equity or debt securities record holders, if applicable; and
- The classes of equity and debt securities, if any, that are the subject of the Form 15F.[94]

As under the current deregistration regime, filing of the Form 15F would immediately suspend the issuer's Exchange Act reporting obligations regarding the subject class of securities and commence a 90-day waiting period.[95] During this period, Commission staff may review the Form 15F. If, at the end of the 90-day period, the Commission has not objected to the filing, the suspension would automatically become a termination of registration and reporting. If the Commission denies the Form 15F or the issuer withdraws it, within 60 days of the date of the denial or withdrawal, the issuer would be required to file or submit all reports that would have been required had it not filed the Form 15F.[96]

We are also proposing to revise the rules governing the Commission's delegated authority to permit staff of the Division of Corporation Finance to accelerate the effectiveness of an issuer's termination of registration and reporting under proposed Rule 12h–6 prior to the 90th day at the issuer's request. The issuer would have to make this request in writing and file it on EDGAR.[97] Nevertheless, Division of Corporation Finance staff may submit requests to accelerate the effectiveness of an issuer's termination of registration and reporting pursuant to proposed Rule 12h–6 to the Commission for consideration, as appropriate.

We are aware that in today's investing and technological environment, it would be overly burdensome and costly to require foreign private issuers to assess the level of U.S. ownership of their securities with absolute certainty. Accordingly, we have proposed methods that should provide a reasonable level of certainty to the process by which a foreign private issuer determines the level of U.S. ownership of its securities.[98]

As proposed, after filing its Form 15F, an issuer would have no continuing obligation to make inquiries or perform other work concerning the information contained in the Form 15F, including its assessment of U.S. ownership of its securities. However, proposed Form 15F would require an issuer to undertake to withdraw its Form 15F prior to the date of its effectiveness if it becomes aware of information that causes it reasonably to believe that U.S. holders held more than the applicable threshold percentage of its worldwide public float or exceeded the threshold number of debt securities record holders, or otherwise causes the issuer no longer to believe that it meets the conditions for terminating its Exchange Act reporting obligations under proposed Rule 12h–6.

Comment Solicited

We solicit comment on the proposed Form 15F.

- Should the Form 15F constitute an issuer's certification regarding each of the specified conditions, as proposed?
- Are there some conditions that we should exclude from the proposed Form 15F certification? Are there other conditions that we should include in the proposed Form 15F certification?
- Should we request an issuer to provide information on each of the enumerated items in the Form 15F, as proposed? Should we revise or omit some or all of the items on the proposed Form 15? Are there any other items that should be included on the proposed Form 15F?
- Should we adopt a 90-day waiting period following the filing of the Form 15F before termination of reporting could become effective, as proposed? Should we instead adopt a shorter or longer period?
- Should we adopt a 60-day period in which an issuer would have to file or submit all required reports should its Form 15F be denied or withdrawn, as proposed? Should we adopt instead a shorter or longer period?
- In the ordinary course, we anticipate that terminations pursuant to proposed Form 15F will become effective 90 days after filing, without Commission action. Should proposed Rule 12h–6 provide for some required processing or action by the Commission before any Form 15F termination of reporting would become effective?
- Should we require an issuer to provide the undertaking, as proposed? Are there other undertakings that we should require on Form 15F? For example, should we also require an issuer to undertake to issue a press release in the United States announcing its withdrawal of the Form 15F? Should we not require any undertakings at all?
- Are there other means to address the possibility of temporary shifts in an issuer's security holders to outside the United States? For example, should we require a foreign private issuer to assess the number of its U.S. security holders at the beginning and end of a three or six-month period before filing a Form 15F?
- Are there other means to address the difficulties associated with determining the level of U.S. ownership of a foreign private issuer's securities through book-entry systems and nominee holders?

6. Notice Requirement

As a condition to termination of reporting, proposed Rule 12h–6 would require a foreign private issuer, not later than 15 business days before it files its Form 15F, to publish a notice in the United States disclosing its intent to terminate its Exchange Act registration and reporting obligations regarding each class of securities under section 12(g) or section 15(d) or both. The issuer would be required to publish the notice through a means, such as a press release, reasonably designed to provide broad dissemination of the information to the public in the United States.[99] The issuer would be required to submit a copy of the notice either under cover of a Form 6–K, before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.[100] The primary purpose of this provision is to alert U.S. investors who have purchased the issuer's securities about the intended exiting of the issuer from the Exchange Act registration and reporting system. The notice requirement would also serve to alert investors and other U.S. market participants that, in the future, they will have to look to the issuer's home country documents, and not Exchange Act reports, for information regarding the issuer.

Comment Solicited

We solicit comment regarding proposed Rule 12h–6(c)'s notice requirement.

[94] Proposed Form 15F would also seek confirmation that the issuer has met the notice requirement of proposed Rule 12h–6(c) (17 CFR 240.12h–6(c)) discussed in Part II.B.6 of this release.

[95] During this period, although the issuer would not be required to file Exchange Act reports, its equity securities would continue to be registered. Consequently, security holders and others might continue to have obligations under Exchange Act sections 13(d) and 14(d) [15 U.S.C. 78m(d) and 78n(d)].

[96] Proposed Rule 12h–6(f).

[97] As noted earlier, there is currently a similar delegation relating to Form 15, which is rarely used.

[98] *See* the proposed counting method and reliance on an independent information services provider discussed in Part II.B.4 of this release.

[99] There are no specific proposed requirements relating to the form or content of the press release or other notice, although such matters may be addressed under the rules of a U.S. securities market in which the issuer's securities are listed.

[100] Proposed Rule 12h–6(c) (17 CFR 240.12h–6(c)).

- Should we require a foreign private issuer to issue a notice, such as a press release, disclosing its intention to terminate its Exchange Act reporting obligations, as proposed?
- If so, should we prescribe the form or content of the notice other than that it be broadly disseminated in the United States?
- Should a foreign private issuer be permitted to submit a copy of the notice to the Commission either prior to or at the time of filing the Form 15F?
- Does the filing of the Form 15F provide enough notice regarding a foreign private issuer's intentions to make the notice requirement unnecessary?
- Should a foreign private issuer be required to issue a notice upon the effectiveness of the termination of its Exchange Act registration and reporting obligations under proposed Rule 12h–6?

C. Proposed Amendment Regarding Rule 12g3–2(b)

Under Rule 12g3–2(b), a foreign private issuer may avoid registering under Exchange Act Section 12(g) if, prior to incurring a registration obligation, it establishes and maintains the exemption by submitting to the Commission various materials that are made public in its home market. As part of our proposals, we are proposing two amendments under this exemption:

- We are proposing to amend Rule 12g3–2(d), which currently prohibits a foreign private issuer from availing itself of the Rule 12g3–2(b) exemption for a period of 18 months after terminating its registration under Section 12(g) or an active or suspended reporting obligation under Section 15(d);[101] and
- We are proposing new Rule 12g3–2(e), which would facilitate compliance with the information submission requirements by foreign private issuers that terminate their reporting obligations under proposed Rule 12h–6 by having them publish required materials on their Internet Web sites instead of submitting materials to the Commission on an ongoing basis.

The proposed amendment to Rule 12g3–2(d) would except from its 18-month prohibition a foreign private issuer that receives the Rule 12g3–2(b) exemption pursuant to new proposed Rule 12g3–2(e). As proposed, a foreign private issuer that has filed a Form 15F with regard to a class of equity securities would receive the Rule 12g3–2(b) exemption immediately upon the effective date of the termination of its Exchange Act reporting obligations pursuant to Rule 12h–6.[102] Thereafter, a foreign private issuer would have to publish in English on its Internet Web site the home country materials that it is required to furnish on a continuous basis[103] under Rule 12g3–2(b).[104] If a foreign private issuer's primary trading market has an electronic information delivery system that is generally available to the public, the issuer instead could publish its home country materials in English through that system.[105]

Proposed Exchange Act Rule 12g3–2(e) would clarify that, at a minimum, in order to satisfy the conditions of the exemption, a foreign private issuer would have to publish electronically English translations of the following home country documents:

- Its annual report, including or accompanied by annual financial statements;
- Interim reports that include financial statements;
- Material press releases; and
- All other material communications and documents distributed directly to security holders of each class of securities to which the exemption relates.[106]

Proposed Exchange Act Rule 12g3–2(e) would further condition the exemption on requiring a foreign private issuer to disclose in its Form 15F the address of its Internet Web site or of the electronic information delivery system on which it will publish its home country materials.[107] The purpose of this proposed extension of Rule 12g3–2(b) is to provide U.S. investors with access to material information about an issuer of equity securities following its termination of reporting pursuant to proposed Rule 12h–6.[108] In addition, an issuer would be able to maintain a sponsored ADR facility with respect to its securities.[109] It also would facilitate resales of that issuer's securities to qualified institutional buyers under Rule 144A.[110] Moreover, having a foreign private issuer's key home country documents posted in English on its Web site would assist U.S. investors who are interested in trading the issuer's securities on its home country exchange.[111]

The proposed extension of Rule 12g3–2(b) would apply to both a class of equity securities formerly registered under section 12(g) and one that formerly gave rise to section 15(d) reporting obligations.[112] The Rule 12g3–2(b) exemption received under proposed Rule 12g3–2(e) would remain in effect for as long as the foreign private issuer satisfied the rule's electronic publication conditions or until the issuer registered a new class of securities under section 12 or incurred section 15(d) reporting obligations by filing a new Securities Act registration statement, which became effective.[113] However, absent a new effective Securities Act registration statement, under proposed Rule 12h–6, the termination of reporting obligations under section 15(d) would be permanent and would not be

[101] As a result, under the current rules, a foreign private issuer is at risk that, during the 18 months after terminating registration under Section 12(g), it may exceed the registration thresholds under Section 12(g) and be required to re-register under the Exchange Act.

[102] *See* proposed Exchange Act Rule 12g3–2(e)(1).

[103] Proposed Rule 12g3–2(e)(2).

[104] Under Rule 12g3–2(b), a foreign private issuer must furnish information that it: (a) has made or is required to make public under the laws of its incorporation, organization or domicile; (b) has filed or is required to file with a non-U.S. stock exchange on which its securities are traded and which has been made public by that exchange; and (c) has distributed or is required to distribute to its security holders. *See* Exchange Act Rules 12g3–2(b)(1)(i) and (iii) (17 CFR 240.12g3–2(b)(1)(i) and (iii)).

[105] For example, a Canadian issuer would be able to fulfill its Exchange Act Rule 12g3–2(e) requirements by filing its home country documents through the Canadian Securities Administrators' System for Electronic Document Analysis and Retrieval (''SEDAR'').

[106] Note 1 to proposed Rule 12g3–2(e). Exchange Act Rule 12g3–2(b)(3) (17 CFR 240.12g3–2(b)(3)) currently provides that the information required to be furnished under the Rule 12g3–2(b) exemption is that which is material to an investment decision. This materiality standard would continue to apply to Rule 12g3–2(b) materials furnished electronically under proposed Rule 12g3–2(e).

[107] There would be no obligation to amend the Form 15F to update the address of the Internet Web site or electronic information delivery system should it change subsequent to the effective date of an issuer's termination of reporting under proposed Rule 12h–6.

[108] Any post-termination trading of a foreign private issuer's securities in the United States would have to occur through over-the-counter markets such as that maintained by the Pink Sheets, LLC since, as of April, 1998, the NASD and the Commission have required a foreign private issuer to register a class of securities under Exchange Act section 12 before its securities could be traded through the electronic over-the-counter bulletin board administered by Nasdaq. *See, for example,* NASD Notice to Members (January 1998).

[109] In order to establish an ADR facility, an issuer must register the ADRs on Form F–6 (17 CFR 239.36) under the Securities Act. The eligibility criteria for the use of Form F–6 include the requirement that the issuer have a reporting obligation under Exchange Act section 13(a) or have established the exemption under Rule 12g3–2(b).

[110] *See* Securities Act Rule 144A(d)(4) (17 CFR 230.144A(d)(4)).

[111] Brokers currently are exempt from complying with certain information obligations under Exchange Act Rule 15c2–11 (17 CFR 240.15c2–11) when a foreign company has established and maintains the Rule 12g3–2(b) exemption. *See* Release No. 34–41110 (February 25, 1999), 64 FR 11124 (March 8, 1999).

[112] Our primary authority for the proposed extension of Rule 12g3–2(b) is Exchange Act Section 12(h) [15 U.S.C. 78l(h)].

[113] *See* proposed Rule 12g3–2(e)(3).

conditioned on continued maintenance of the Rule 12g3–2(b) exemption.

Currently foreign companies maintain the Rule 12g3–2(b) exemption by submitting to the Commission on an ongoing basis the material required by the rule. This material may only be submitted in paper format.[114] Although the Commission's EDGAR database contains an entry signifying the receipt of paper documents, materials received in paper are not accessible through the EDGAR system. Because paper submissions are more difficult to access, we have proposed the amendment to Rule 12g3–2, which relies on electronic access to a foreign company's home country securities documents, although not through the Commission's electronic database.

Comment Solicited

We solicit comment on the proposed amendment to Rule 12g3–2(d) and on proposed new Rule 12g3–2(e).

- Should we require a foreign private issuer that has terminated its Exchange Act reporting with regard to a class of equity securities under proposed Rule 12h–6 to comply with the home country publication requirements under Rule 12g3–2(b) by immediately granting the issuer the Rule 12g3–2(b) exemption upon the effectiveness of its termination of reporting, as proposed?
- Should we instead permit but not require such a foreign private issuer to apply for the Rule 12g3–2(b) exemption following termination of reporting under proposed Rule 12h–6?
- Or should we leave unamended Rule 12g3–2(d) and require a foreign private issuer to wait 18 months before it could apply for the Rule 12g3–2(b) exemption?
- If we should extend the Rule 12g3–2(b) exemption to a foreign private issuer that has terminated its Exchange Act reporting under proposed Rule 12h–6, should we require the issuer to publish electronically on its Internet Web site the home country documents required to be furnished under Rule 12g3–2(b)?
- If so, should we also allow the issuer to publish its home country documents through an electronic information delivery system in its primary trading market?
- Should we permit the issuer either to publish the required home country documents electronically or submit them in paper to the Commission?
- Should we require the issuer only to submit the required home country documents in paper to the Commission as is currently the requirement for non-Exchange Act reporting companies that have received the Rule 12g3–2(b) exemption?
- Should we require a foreign private issuer that has received the Rule 12g3–2(b) exemption under proposed Rule 12g3–2(e) to publish electronically English translations of the home country documents listed in proposed Note 1 to that proposed rule?
- Should we exclude any of the specified home country documents from the English translation and electronic publication condition? Are there other home country documents not mentioned in the proposed rule that should be translated in English and published electronically?
- Should we require the issuer to post its home country documents in English on its Internet Web site for a specified period of time? For example, should the issuer be required to keep its annual report in English available on its Internet Web site for at least 1, 2 or 3 or more years? Should the issuer be required to keep its material press releases in English for at least 6 months or a year?

As proposed, foreign companies that obtain the Rule 12g3–2(b) exemption by filing a Form 15F would be able to maintain the exemption through their Web site postings without the need for submitting material to the Commission. We would continue to require all other foreign companies that have the Rule 12g3–2(b) exemption to submit the required materials in paper to the Commission. In light of developments relating to information dissemination and information technology, we solicit comments generally on the Exchange Act exemptive scheme for foreign private issuers.

- Should we modify the registration thresholds under Rule 12g3–2(a) from 300 U.S. resident holders to some other measure?
- Does the Rule 12g3–2(b) exemption continue to serve a useful purpose for investors seeking information on foreign companies?
- Should we consider methods of compliance with Rule 12g3–2(b), such as Web site postings, as an alternative to the submission of paper documents to the Commission? How would such alternative methods operate in practice, and how would Commission staff oversee compliance?
- Does oversight by Commission staff in this area continue to be necessary or appropriate and serve to further investor protection? Is such oversight necessary or appropriate for a company that has obtained the Rule 12g3–2(b) exemption after terminating its reporting obligations under proposed Rule 12h–6?

General Request for Comments

We solicit comment on proposed Rule 12h–6, proposed Form 15F, proposed amendments to Rules 12g–4, 12h–3, 12g3–2(d) and 12g3–2(e) as well as to all other aspects of the proposed rule amendments. Here and throughout the release, when we solicit comment, we are interested in hearing from all interested parties, including members and representatives of the investing public, representatives of foreign companies and foreign industry groups, representatives of broker-dealers, domestic issuers, and other participants in U.S. securities markets. We are further interested in learning from all parties what aspects of the rule proposal they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified.

III. Paperwork Reduction Act Analysis

This rule proposal contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[115] We are submitting our proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[116] The titles of the affected collection of informations are Form 20–F (OMB Control No. 3235–0288), Form 40–F (OMB Control No. 3235–0381), Form 6–K (OMB Control No. 3235–0116), and proposed new Form 15F.[117] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 20–F or proposed new Form 15F unless it displays a currently valid OMB control number. Compliance with the disclosure requirements of proposed Form 15F and proposed Rule 12h–6,

[114] A non-Exchange Act reporting issuer that has successfully filed an application for the Rule 12g3–2(b) exemption must currently furnish its home country documents in paper because the application is analogous to one submitted for an exemption under Exchange Act section 12(h). *See* Regulation S–T Rule 101(c)(16) (17 CFR 232.101(c)(16)).

[115] 44 U.S.C. 3501 *et seq.*

[116] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[117] A limited number of foreign private issuers file annual reports on Form 10–K. In voluntarily electing to file periodic reports using domestic issuer forms, these issuers seem to have closely aligned themselves with the U.S. market. For purposes of the Paperwork Reduction Analysis therefore, these issuers would appear unlikely to terminate their Exchange Act registration using proposed Rule 12h–6, and we have assumed that none of these companies would seek to use proposed Rule 12h–6. Foreign private issuers that file periodic reports using domestic issuer forms would, nonetheless, be eligible to use proposed Rule 12h–6.

which will affect the above collections of information, will be mandatory.

Form 20–F sets forth the disclosure requirements for a foreign private issuer's annual report and registration statement under the Exchange Act as well as many of the disclosure requirements for a foreign private issuer's registration statements under the Securities Act. The Commission adopted Form 20–F pursuant to the Exchange Act and the Securities Act in order to provide investors with information about foreign private issuers that have registered securities with the Commission.

Form 40–F sets forth the disclosure requirements regarding the annual report and registration statement under the Exchange Act for a Canadian issuer that is qualified to use the Multijurisdictional Disclosure System (''MJDS''). The Commission adopted Form 40–F pursuant to the Exchange Act in order to permit qualified Canadian issuers to prepare their Exchange Act annual reports and registration statements based primarily in accordance with Canadian requirements.

Form 6–K is used by a foreign private issuer to report material information that it:

- Makes or is required to make public under the laws of the jurisdiction of its incorporation, domicile or organization (its ''home country'');
- Files or is required to file with its home country stock exchange that is made public by that exchange; or
- Distributes or is required to distribute to its security holders.

A foreign private issuer may attach annual reports to security holders, statutory reports, press releases and other documents as exhibits or attachments to the Form 6–K. The Commission adopted Form 6–K under the Exchange Act in order to keep investors informed on an ongoing basis about foreign private issuers that have registered securities with the Commission.

Proposed Form 15F is the form that a foreign private issuer would have to file when terminating its Exchange Act reporting obligations under proposed Exchange Act Rule 12h–6. Proposed Form 15F would require a filer to disclose information that would help investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assist Commission staff in assessing whether the Form 15F filer is eligible to terminate its Exchange Act reporting obligations pursuant to proposed Rule 12h–6.

The hours and costs associated with preparing, filing and sending Forms 20–F, 40–F, and 6–K and proposed Form 15F constitute reporting and cost burdens imposed by those collections of information. We have based our estimates of the effects that the rule proposal would have on those collections of information primarily on our review of the most recently completed PRA submissions for Forms 20–F, 40–F, and 6–K, on those forms' requirements and on the proposed requirements of Form 15F, and on relevant information, for example, concerning comparative trading volume and public float for numerous filers of those forms.

The estimated effects of the rule proposal reflect the initial phase-in period of the Exchange Act termination process under proposed Rule 12h–6 and under proposed Form 15F during the first year of use. We expect that most if not all of these estimated effects will occur on a one time, rather than a recurring, basis. While we expect that some issuers will terminate their Exchange Act reporting under proposed Rule 12h–6 and file Form 15F in subsequent years, we do not expect the resulting burdens and costs to be of the same magnitude as the burdens and costs currently expected during the first year.

A. Form 20–F

We estimate that currently foreign private issuers file 1,100 Form 20–Fs each year. We further estimate that it requires a total of 2,893,000 annual burden hours to produce these Form 20–Fs or 2,630 hours on average for each Form 20–F. We estimate that foreign private issuers incur 25% of the burden, or 723,250 annual burden hours, required to produce the Form 20–Fs. We further estimate that outside firms, including legal counsel, accountants and other advisors, account for 75% of the burden required to produce the Form 20–Fs at an average cost of $300 per hour for a total annual cost of $650,925,000.

Proposed Rule 12h–6 would permit a foreign private issuer to terminate its Exchange Act reporting obligations, including the obligation to file an annual report on Form 20–F, regarding a class of securities under section 12(g) or pursuant to section 15(d) of the Exchange Act. It is possible that, if adopted, as many as 15% of Form 20–F filers could terminate their Exchange Act reporting obligations under the rule proposal in the first year. However, if adopted, the rule proposal also may encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time. As a result, during this same period, the number of Form 20–F annual reports filed could increase by 5%, leading to a net decrease of 10% for Form 20–Fs filed over this same period. This would result in a decrease for this 1 year period in:

- The number of Form 20–Fs filed by 110 to 990 Form 20–Fs;
- The total number of burden hours for Form 20–F by 289,300 to 2,603,700 hours;
- The total number of burden hours incurred by foreign private issuers to produce Form 20–F by 72,325 to 650,925 hours; and
- The total cost incurred by outside firms to produce Form 20–F by $65,092,500 to $585,832,500.

B. Form 40–F

We estimate that foreign private issuers file 134 Form 40–Fs each year. We further estimate that it requires a total of 57,240 annual burden hours to produce these Form 40–Fs or 427 hours on average for each Form 40–F. We estimate that foreign private issuers incur 25% of the burden, or 14,310 annual burden hours, required to produce the Form 40–Fs. We further estimate that outside firms, including legal counsel, accountants and other advisors, account for 75% of the burden required to produce the Form 40–Fs at an average cost of $300 per hour for a total annual cost of $12,879,000.

Proposed Rule 12h–6 would permit a foreign private issuer filing on the MJDS forms to terminate its Exchange Act reporting obligations, including the obligation to file its annual report on Form 40–F. It is possible that, if adopted, as many as 10% of Form 40–F filers could terminate their Exchange Act reporting obligations under the rule proposal in the first year. However, if adopted, the rule proposal may encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time, including some that would be eligible to use the MJDS forms, including the Form 40–F annual report. As a result, over this same period, the number of Form 40–F annual reports filed could increase by approximately 3%, so that there would be a net decrease of 7% for Form 40–Fs filed over this same period. This would result in a decrease for this 1 year period in:

- The number of Form 40–Fs filed by 9 to 125 Form 40–Fs;
- The total number of burden hours for Form 40–F by 3,865 to 53,375 hours;
- The total number of burden hours incurred by foreign private issuers to

produce Form 40–F by 966 to 13,344; and

• The total cost incurred by outside firms to produce Form 40–F by $869,625 to $12,009,375.

C. Form 6–K

We estimate that foreign private issuers file 14,661 Form 6–Ks each year. We further estimate that it requires a total of 127,197 annual burden hours for the Form 6–K, of which 9,909 annual burden hours relate to the work required to translate foreign language text into English. We estimate that foreign private issuers incur 75% of the burden of preparing the Form 6–K, not including the English translation work (87,966 hours) and 25% of the burden required to translate foreign language text into English (2,477 hours), which results in 90,443 total annual foreign private issuer burden hours to produce the Form 6–Ks, or 6.2 burden hours on average for each response.

We estimate that outside firms, including legal counsel, accountants and other advisors, account for 25% of the burden required to produce the Form 6–Ks, not including the English translation work, (29,322 hours) at an average cost of $300 per hour for an annual cost of $8,796,600. We estimate that each year 367 Form 6–K filings result in costs to translate into English 8 pages of foreign language text per filing. We estimate that outside firms incur 75% of these English translation costs at a cost of $75 per page, which results in additional annual costs of $165,150 for outside firms, and total annual costs of $8,961,750 incurred by outside firms in the preparation and translation of the Form 6–K.

Proposed Rule 12h–6 would permit a foreign private issuer to terminate its Exchange Act reporting obligations, including the obligation to file Form 6–K reports. It is possible that, if adopted, as many as 14% of Form 6–K filers (including those that file their Exchange Act annual reports either on Form 20–F or Form 40–F) might terminate their Exchange Act reporting obligations under the rule proposal in the first year. However, if adopted, the rule proposal could encourage some foreign companies to enter the Exchange Act registration and reporting regime for the first time. As a result, over the same period, the number of Form 6–K reports filed could increase by as much as 5%, resulting in a net decrease of 9% for Form 6–Ks filed over this same period. This would result in a decrease for this 1 year period in:

• The number of Form 6–Ks filed by 1,319 to 13,342 Form 6–Ks;

• The total number of burden hours for Form 6–K by 10,552 to 116,645; [118]

• The total number of burden hours incurred by foreign private issuers to produce Form 6–K by 7,502 to 82,941 hours (of which 2,272 relate to English translation burden hours); and

• The total cost incurred by outside firms to produce Form 6–K by $744,450 to $8,217,300.[119]

D. Proposed Form 15F

The rule proposal would further require a foreign private issuer seeking to terminate its Exchange Act reporting obligations under proposed Rule 12h–6 to file a Form 15F. As proposed, Form 15F would require a foreign private issuer to provide information regarding several items, including its Exchange Act reporting history, its primary trading market, and its U.S. securities market.

It is possible that as many as 178 foreign private issuers may file Form 15F if adopted during the initial 1 year period. We estimate that it will take approximately 30 burden hours on average to produce each Form 15F. The filing of 178 forms 15F would take a total of 5,340 burden hours. We estimate that foreign private issuers would incur 25% of this burden or approximately 1,335 burden hours to produce the Form 15Fs. We further estimate that outside firms, including legal counsel, financial analysts and other advisors, would account for 75% of the burden required to produce the Form 15Fs at an average cost of $300 per hour for a total cost of $1,201,500.

[118] Although the total number of burden hours required to produce the 1,319 Form 6–Ks amounts to 11,443 hours, 891 of these hours relate to the burden of translating Form 6–K documents into English. We have subtracted these hours from the total burden hours expected to be reduced by the proposal (11,443–891 = 10,552) because we expect a foreign private issuer to incur approximately the same burden hours and costs related to English translation work when it fulfills the requirement under the rule proposal to publish its home country documents required under Exchange Act Rule 12g3–2(b) in English on its Internet Web site. Those home country documents are substantially the same as the home country documents that a reporting foreign private issuer must furnish under cover of a Form 6–K.

[119] We have derived these estimated costs as follows: 116,645 − 9,087 = 107,558 burden hours related to non-English translation work. 107,558 × 0.25 = 26,890 burden hours borne by outside firms. 26,826,90 hours × $300/hour = $8,067,000 000 in costs borne by outside firms for non-English translation work. In addition, we estimate outside firms would incur an additional $150,300 in costs relating to English translation work, derived as follows: 334 Form 6–Ks would each require 8 pages of foreign language text to be translated (a total of 2,672 pages) at a cost of $75 per page ($200,400), of which outside firms would incur 75% ($200,400 400 × .75 = $150,300). $8,067,000 + $150,300 = $8,217,300.

Comment Solicited

We solicit comment on the expected effects of the rule proposal on Form 20–F, Form 40–F, and Form 6–K and on the expected effects of proposed Form 15F under the PRA. In particular, we solicit comment on:

• The extent to which foreign private issuers would respond to proposed Rule 12h–6 by electing to file Form 15F to terminate their registration and reporting in the U.S.;

• How many foreign private issuers would join the Exchange Act registration and reporting regime for the first time as a result of the proposed rule;

• How accurate are our burden hour and cost estimates for Forms 20–F, 40–F and 6–K expected to result from proposed Rule 12h–6;

• How accurate are our burden hour and cost estimates for proposed Form 15F; and

• Whether most of the effects of proposed Rule 12h–6 would occur during the first year, as expected, or over a longer period, for example, during the first two or three years.

We further solicit comment in order to:

• Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

• Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

• Evaluate whether the rule proposal will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–12–05.

Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–12–05, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

A. Expected Benefits

Proposed Rule 12h–6 and the accompanying proposed rule amendments would benefit investors to the extent that they remove a disincentive for foreign companies that are not currently Exchange Act reporting companies to register their equity and debt securities with the Commission by lessening their concerns that the Exchange Act reporting system is one that is difficult to leave once a company joins it. In so doing, the rule proposal would help encourage more foreign companies to initiate participation in U.S. public capital markets while providing U.S. investors with the protections afforded by our Exchange Act reporting regime.

The rule proposal would offer foreign firms stronger incentives to enter into our Exchange Act reporting regime by lowering the cost of exiting from that regime. Investors would benefit because they generally receive a high level of investor protection from trading in securities registered with the Commission. In addition, U.S. investors typically incur lower transaction costs when trading on U.S. exchanges relative to foreign exchanges. U.S. investors may further benefit as more foreign companies list on U.S. exchanges, to the extent that trading on U.S. exchanges exhibit economies of scale or scope.

To offer incentives for foreign companies to enter U.S. public capital markets, the proposed rules would provide foreign Exchange Act reporting companies with lower costs of compliance, which may benefit foreign companies and their investors. These costs of compliance are incurred directly by the foreign companies, yet accrue to investors in those foreign companies.

The proposal may result in foreign private issuers incurring lesser costs of Exchange Act compliance in three possible ways. The first is that it would decrease the issuer's cost of verifying whether it qualifies for Exchange Act termination of registration and reporting. That is, the rule proposal would enable a foreign private issuer to rely on the assistance of an independent information services provider when making that determination. The option to hire an independent information services provider may allow some foreign firms to save costs, which would benefit U.S. and foreign investors. Moreover, proposed Rule 12h–6 would limit the number of jurisdictions in which a foreign private issuer would have to search for the amount of securities represented by accounts of customers resident in the United States held by brokers, dealers, banks and other nominees when determining whether it qualifies for termination of reporting. The current rules require a foreign private issuer to conduct a worldwide search for such U.S. customer accounts.

Second, once having terminated its reporting obligations under proposed Rule 12h–6, a foreign company would no longer be required to incur costs associated with producing an Exchange Act annual report or having to submit Form 6–K interim reports.

Third, a foreign private issuer would face lower costs of compliance under proposed Rule 12h–6 and the accompanying rule amendments than under the current regime because the proposed rules would allow the foreign firm to terminate permanently its Exchange Act reporting obligations regarding a class of equity or debt securities. Accordingly, such a terminating foreign private issuer would be able to avoid the costs associated with continued annual verification that its number of holders of record remains below 300.

B. Expected Costs

Investors could incur costs from the proposed rules to the extent that foreign companies respond by terminating their Exchange Act registration and reporting obligations with respect to their equity and debt securities. First, investors could face lesser investor protection upon Exchange Act termination. Second, around or after the time of Exchange Act termination, investors may incur higher costs from trading in the equity and debt securities.

Depending on the implementation date of proposed Rule 12h–6, it is possible that by quickly terminating their Exchange Act registration and reporting, some current foreign registrants could avoid other recent U.S. regulation, such as the Sarbanes-Oxley Act.[120] If the initial costs of implementing the Sarbanes-Oxley Act are high, then the proposal might induce some foreign registrants to terminate their Exchange Act registration and reporting under Rule 12h–6 as soon as possible. To the extent that the Sarbanes-Oxley Act is beneficial to investors, they would be harmed if a current foreign registrant does not implement the Sarbanes-Oxley Act.

Some U.S. investors might seek to trade in the equity securities of a foreign company following its termination of Exchange Act reporting under proposed Rule 12h–6. Those U.S. investors seeking to trade the former reporting company's securities in the U.S. unlisted over the counter market such as the one administered by Pink Sheets, LLC could encounter additional costs of transacting as a result of the proposed rule to the extent that brokerage fees and other costs incurred are higher than if the foreign company had continued to have a class of securities registered with the Commission.

Those U.S. investors seeking to trade the former reporting company's securities in its primary trading market could also incur additional costs. For example, those U.S. investors who held the securities in the form of ADRs could incur costs associated with the depositary's conversion of the ADRs into ordinary shares.[121] Moreover, some U.S. investors could incur costs associated with finding and contracting with a new broker-dealer who is able to trade in the foreign reporting company's primary trading market. U.S. investors may face additional costs due to cost of currency conversion and higher transaction costs trading the securities in a foreign market.

Some investors who wish to make investment decisions regarding former Exchange Act reporting foreign companies also may incur costs to the extent that the information provided by such companies pursuant to any home country regulations is different from that which currently is required under the Exchange Act. Such investors could incur costs associated with hiring an attorney or investment adviser, to the

[120] Pub. L. 107–204, 116 Stat. 745 (2002).

[121] A foreign company could terminate its ADR facility whether or not it is an Exchange Act registrant, and proposed Rule 12h–6 does not require the termination of ADR facilities. In fact, by granting foreign private issuers the Rule 12g3–2(b) exemption immediately upon their termination of reporting with regard to a class of equity securities, the rule proposal would enable foreign private issuers to retain their ADR facilities as unlisted facilities following their termination of reporting under proposed Rule 12h–6. Therefore, the proposed rule should not significantly increase costs to investors in this area.

extent that they have not already done so, to explain the material differences, if any, between a foreign company's home country reporting requirements, as reflected in its home country annual report posted on its Internet Web site, and Exchange Act reporting requirements.

Following termination of reporting under proposed Rule 12h–6, a foreign private issuer would have to publish electronically its home country documents in English required under Rule 12g3–2(b) on its Internet web site or through an electronic information delivery system that is generally available to the public in its primary trading market. Since the home country materials required under Rule 12g3–2(b) are substantially the same as the home country materials required to be submitted under cover of Form 6–K on EDGAR, we do not expect a foreign private issuer to incur any additional significant costs resulting from the proposed rule's electronic publishing requirement.

Comment Solicited

We solicit comment on the costs and benefits to U.S. and other investors, foreign private issuers, and others who may be affected by proposed Rule12h–6, proposed Form 15F and the associated proposed rule amendments. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the rule proposal. We also request data to quantify the costs and value of the benefits identified. In particular, we solicit comment on:

- The number of current foreign private issuers that are expected to terminate their Exchange Act registration and reporting as a result of proposed Rule 12h–6 and the accompanying rule proposals and the timing of such termination;
- The number of prospective foreign companies that are expected to join the Exchange Act reporting regime as a result of the rule proposals and the timing of such intial registration and reporting;
- Whether a U.S. investor would incur costs by trading a foreign company's securities through the U.S. unlisted over-the-counter market such as the one administered by the Pink Sheets, LLC following the foreign company's termination of reporting under the proposed rules, and, if so, what costs;
- Whether a U.S. investor would incur costs by trading a foreign company's securities in its home country market following the company's termination of reporting under the proposed rules and, if so, what costs;
- Whether some foreign private issuers would choose to terminate quickly their Exchange Act reporting obligations under proposed Rule 12h–6 to avoid having to comply with the Sarbanes-Oxley Act and, if so, whether that should affect the rule proposals; and
- Whether investors would benefit both directly and indirectly from the rule proposals, as discussed in this section.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[122] we solicit data to determine whether the proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[123] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act[124] requires the Commission to consider whether the action will promote efficiency, competition and capital formation.

Proposed Rule 12h–6, proposed Form 15F and the other proposed rule amendments would encourage foreign private issuers to register their equity and debt securities with the Commission by reducing concerns of some foreign private issuers that our Exchange Act reporting system is difficult to leave once one joins it. By providing increased flexibility for foreign private issuers regarding our Exchange Act reporting system, the proposed rules would encourage foreign companies to participate in U.S. capital markets as Exchange Act reporting companies to the benefit of investors. In so doing, the proposed rules should foster increased competition between domestic and foreign firms for investors in U.S. capital markets. Moreover, by requiring a foreign private issuer that has terminated its Exchange Act reporting under the proposed rules to publish its home country documents required under Exchange Act Rule 12g3–2(b) in English on its Internet web site or through an electronic information delivery system that is generally available to the public in its primary trading market, the proposed rules would help ensure that U.S. investors continue to have ready access to material information in English about the foreign private issuer. Thus, the proposed rules should foster increased efficiency in the trading of the issuer's securities for U.S. investors following the issuer's termination of Exchange Act reporting.

We solicit comment on whether the proposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Act Certification

The Securities and Exchange Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that proposed Rule 12h–6 and proposed Form 15F under the Exchange Act, the proposed amendments to Rules 12g3–2, 12g–4 and 12h–3 under the Exchange Act, and the proposed amendments to Rule 30–1 of its Delegation of Authority rules and Rule 101 of Regulation S–T, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The reason for this certification is as follows.

Proposed Rule 12h–6, proposed Form 15F and the accompanying proposed rule amendments would permit the termination of Exchange Act reporting by a foreign private issuer regarding a class of equity securities under either

[122] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[123] 15 U.S.C. 78w(a)(2).

[124] 15 U.S.C. 78c(f).

Exchange Act section 12(g) or section 15(d) for which there is little U.S. investor interest. The proposed rules would further permit a foreign private issuer that seeks termination of reporting regarding a class of equity or debt securities to also terminate its section 15(d) reporting obligations regarding a class of debt securities as long as it meets conditions similar to those currently required for suspending reporting obligations under section 15(d). The proposed rule amendments would also automatically extend the Exchange Act Rule 12g3–2(b) exemption to a foreign private issuer that has terminated its Exchange Act reporting obligations with regard to a class of equity securities pursuant to proposed Rule 12h–6 on the condition that it publish material information required by its home country in English on its Internet Web site or through an electronic information delivery system that is generally available to the public in its primary trading market.

Because proposed Rule 12h–6 and the accompanying rule amendments would only apply to foreign private issuers, they would directly affect only foreign companies and not domestic companies. Similarly, proposed Form 15F would only affect foreign companies since only foreign private issuers would be permitted to use this form.

Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress did not intend that the Act apply to foreign issuers. Accordingly, the entities directly affected by the proposed rule and form amendments will fall outside the scope of the Act. For this reason, proposed Exchange Act Rule 12h–6, proposed Form 15F, and the accompanying proposed rule amendments should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis and Text of Rule Amendments

We propose to amend Rule 30–1 of Part 200, Rule 101 of Regulation S–T, and Exchange Act Rules 12g3–2, 12g–4 and 12h–3, and to add Exchange Act Rule 12h–6 and Form 15F under the authority in Sections 6, 7, 10 and 19 of the Securities Act [125] and Sections 3(b), 12, 13, 23 and 36 of the Exchange Act.[126]

[125] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s.

[126] 15 U.S.C. 78c, 78*l*, 78m, 78w, and 78mm.

Text of Proposed Rule Amendments

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

17 CFR Parts 232, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77o, 77sss, 78d, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 80a–37, 80b–11, and 7202, unless otherwise noted.

* * * * *

2. Amend § 200.30–1 by adding paragraph (e)(17) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(17) At the request of a foreign private issuer, pursuant to Rule 12h–6 (§ 240.12h–6 of this chapter), to accelerate the termination of the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or the duty to file reports under section 15(d) of the Act (15 U.S.C. 78o(d)).

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

3. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

4. Amend § 232.101 by:

a. Removing the word ''and'' at the end of paragraph (a)(1)(x);

b. Removing the period and adding ''; and'' at the end of paragraph (a)(1)(xi); and

c. Adding paragraph (a)(1)(xii).

The additions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xii) Forms 15 and 15F (§ 249.323 and § 249.324 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

6. Amend § 240.12g3–2 by revising paragraph (d)(1) and adding paragraph (e) to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9, F–10 or F–80), except as provided by paragraph (e) of this section;

* * * * *

(e)(1) A foreign private issuer that has filed a Form 15F (§ 249.324 of this chapter) pursuant to § 240.12h–6 shall receive the exemption provided by paragraph (b) of this section for a class of equity securities immediately upon the effectiveness of the termination of registration of that class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or the termination of the duty to file reports regarding that class of securities under section 15(d) of the Act (15 U.S.C. 78o(d)), or both.

(2) Notwithstanding any provision of § 240.12g3–2(b), in order to satisfy the conditions of the § 240.12g3–2(b) exemption received under this paragraph, the issuer shall publish in English the information required under paragraph (b)(1)(iii) of this section on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market.

(3) The § 240.12g3–2(b) exemption received under this paragraph will remain in effect for as long as the foreign private issuer satisfies the electronic publication condition of paragraph (e)(2) of this section or until

the issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act regarding securities that were not the subject of the Form 15F.

Notes to Paragraph (e): 1. In order to maintain the § 240.12g3–2(b) exemption obtained under this paragraph, at a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be furnished under paragraph (b)(1)(iii) of this section if in a foreign language:

a. Its annual report, including or accompanied by annual financial statements;

b. Interim reports that include financial statements;

c. Press releases; and

d. All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

2. *Primary trading market* has the same meaning as under § 240.12h–6(d).

3. A foreign private issuer shall disclose in the Form 15F the address of its Internet Web site or of the electronic information delivery system in its primary trading market on which it will publish the information required under paragraph (b)(1)(iii) of this section. An issuer need not update the Form 15F to reflect a change in that address.

7. Amend § 240.12g–4 by:

a. Removing the authority citations following the section; and

b. Revising paragraph (a) to read as follows:

§ 240.12g–4 Certifications of termination of registration under section 12(g).

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (17 CFR 249.323) that the class of securities is held of record by:

(1) Less than 300 persons; or

(2) Less than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.

* * * * *

8. Amend § 240.12h–3 by:

a. Removing the authority citations following the section;

b. Adding the word ''and'' at the end of paragraph (b)(1)(ii);

c. Removing paragraph (b)(2), including the undesignated paragraph;

d. Redesignating paragraph (b)(3) as (b)(2);

e. Revising the cite ''paragraphs (b)(1)(ii) and (2)(ii)'' to read ''paragraph (b)(1)(ii)'' in paragraph (c); and

f. Revising the phrase ''criteria (i) and (ii) in either paragraph (b)(1) or (2)'' to read ''either criteria (i) or (ii) of paragraph (b)(1)'' in paragraph (d).

9. Add § 240.12h–6 to read as follows:

§ 240.12h–6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 15(d).

(a) A foreign private issuer may terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or terminate the obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) to file or furnish reports required by section 13(a) of the Act (15 U.S.C. 78m(a)) with respect to a class of equity securities, or both, after certifying to the Commission on Form 15F (17 CFR 249.324) that:

(1) The foreign private issuer has had reporting obligations under section 13(a) or 15(d) of the Act for the two years preceding the filing of the Form 15F, has filed or furnished all reports required for this period, and has filed at least two annual reports pursuant to section 13(a) of the Act;

(2)(i) The foreign private issuer's securities have not been sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) during the preceding 12 months other than securities:

(A) Sold to the issuer's employees; or

(B) Sold by selling security holders in non-underwritten offerings;

(ii) The foreign private issuer has not sold securities in unregistered offerings in the United States during the preceding 12 months other than securities:

(A) Sold to the issuer's employees;

(B) Exempted from registration under section 3 of the Securities Act (15 U.S.C. 77c), except under section 3(a)(10) of that Act; or

(C) Constituting obligations having a maturity of less than nine months at the time of issuance and offered and sold in transactions exempted from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2));

(3) The foreign private issuer has maintained a listing of the subject class of securities for the preceding two years on an exchange in its home country, which constitutes the primary trading market for the securities;

(4) If the foreign private issuer is a well-known seasoned issuer, either:

(i)(A) The average daily trading volume of the subject class of securities in the United States during a recent 12 month period has been no greater than 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market during the same period; and

(B) United States residents held no more than 10 percent of the outstanding voting and non-voting equity securities, regarding which there is a reporting obligation under section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)), held by the issuer's non-affiliates on a worldwide basis at a date within 60 days before the end of the same 12 month period; or

(ii) United States residents held no more than 5 percent of the outstanding voting and non-voting equity securities, regarding which there is a reporting obligation under section 13(a) or 15(d) of the Act, held by the issuer's non-affiliates on a worldwide basis at a date within 120 days before the filing date of the Form 15F;

(5) If the foreign private issuer is not a well-known seasoned issuer, United States residents held no more than 5 percent of the outstanding voting and non-voting equity securities, regarding which there is a reporting obligation under section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78(o)(d)), held by the issuer's non-affiliates on a worldwide basis at a date within 120 days before the filing date of the Form 15F; and

(6) If the foreign private issuer does not meet the requirements of paragraph (a)(4) or (a)(5) of this section, at a date within 120 days before the filing date of the Form 15F, the class of equity securities is either held of record by:

(i) Less than 300 persons on a worldwide basis; or

(ii) Less than 300 persons resident in the United States.

(b) A foreign private issuer may terminate its duty under section 15(d) of the Act to file or furnish reports required by section 13(a) of the Act with respect to a class of debt securities after certifying to the Commission on Form 15F that:

(1) The foreign private issuer has filed or furnished all reports required under section 15(d) of the Act, including at least one annual report pursuant to section 13(a) of the Act; and

(2) At a date within 120 days before the filing date of the Form 15F, the class of debt securities is either held of record by:

(i) Less than 300 persons on a worldwide basis; or

(ii) Less than 300 persons resident in the United States.

(c) As a condition to termination of reporting under this section, a foreign private issuer must, not later than 15

business days before it files its Form 15F, publish a notice in the United States that discloses its intent to terminate its section 13 reporting obligations regarding each class of securities under section 12(g) or section 15(d) of the Act or both. The issuer must publish the notice through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer must also submit a copy of the notice either under cover of a Form 6–K (17 CFR 249.306) before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

(d) *Definitions.* For the purpose of this section:

(1) *Affiliate* has the same meaning as under § 240.12b–2).

(2) *Debt security* means any security other than an equity security as defined under § 240.3a11–1, including non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer.

(3) *Equity security* has the same meaning as under § 240.3a11–1.

(4) *Foreign private issuer* has the same meaning as under § 240.3b–4.

(5) *Home country* has the same meaning as under § 249.220f.

(6) *Primary trading market* means that at least 55 percent of the trading in the foreign private issuer's securities took place in, on or through the facilities of a securities market in a single foreign country during a recent 12 month period.

(7) *Recent 12 month period* means a 12 calendar month period that ended no more than 60 days before the filing date of the Form 15F.

(8) *Well-known seasoned issuer* means a well-known seasoned issuer as defined in § 230.405 of this chapter that meets the requirements of paragraph (1)(i)(A) of that definition; *provided, however*, that the determination date of well-known seasoned issuer status shall be a date within 120 days of filing the Form 15F.

(e) *Counting method.* When determining under this section the percentage of a foreign private issuer's outstanding equity shares held by its non-affiliates on a worldwide basis that are held by U.S. residents or the number of U.S. residents holding a foreign private issuer's equity or debt securities:

(1) Use the method for calculating record ownership § 240.12g3–2(a), except that you may limit your inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in:

(i) The United States;

(ii) The foreign private issuer's jurisdiction of incorporation, legal organization or establishment; and

(iii) The jurisdiction of the foreign private issuer's primary trading market if different than the issuer's jurisdiction of incorporation, legal organization or establishment.

(2) If, after reasonable inquiry, you are unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, for purposes of this section, you may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.

(3) You must count securities as owned by U.S. holders when publicly filed reports of beneficial ownership or information that is otherwise provided to you indicates that the securities are held by U.S. residents.

(4) When calculating the number of your U.S. resident security holders under this section, you may rely in good faith on the assistance of an independent information services provider that in the regular course of its business assists issuers in determining the number of, and collecting other information concerning, their security holders.

(f) Suspension of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act shall occur immediately upon filing the Form 15F with the Commission. If there are no objections from the Commission, termination of the foreign private issuer's duty to file section 13 reports under section 15(d) of the Act or regarding a class of securities under section 12(g) of the Act shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer has filed its Form 15F. However, if the Form 15F is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

11. Add § 249.324 to read as follows:

§ 249.324 Form 15F, certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 15(d).

This form shall be filed by a foreign private issuer to disclose and certify the information on the basis of which it meets the requirements specified in Rule 12h–6 (§ 240.12h–6 of this chapter) to terminate a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) or the duty under section 15(d) of the Act (15 U.S.C. 78(o)(d)) to file reports required by section 13 of the Act (15 U.S.C. 78m(a)), or both. In each instance, unless the Commission objects, termination occurs 90 days, or such shorter time as the Commission may direct, after the filing of Form 15F.

12. Add Form 15F (referenced in § 249.324) to read as follows:

(Note: The text of Form 15F will not appear in the Code of Federal Regulations.)

OMB APPROVAL

OMB Number: 3235–

Expires:

Estimated average burden hours per response * * *

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 15F

CERTIFICATION OF A FOREIGN PRIVATE ISSUER'S TERMINATION OF REGISTRATION OF A CLASS OF SECURITIES UNDER SECTION 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934 OR ITS TERMINATION OF THE DUTY UNDER SECTION 15(d) TO FILE REPORTS REQUIRED BY SECTION 13 OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number _____

(Exact name of registrant as specified in its charter)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Title of each class of securities covered by this Form)

Place an X in the appropriate box(es) to indicate the provision(s) relied upon to terminate the duty to file reports

under the Securities Exchange Act of 1934:

Rule 12h–6(a) ☐
Rule 12h–6(b) ☐

GENERAL INSTRUCTIONS

A. Who May Use Form 15F and When

A foreign private issuer may file Form 15F, pursuant to Rule 12h–6(a) (17 CFR 240.12h–6(a)) under the Securities Exchange Act of 1934 (''Exchange Act''), when seeking to terminate:

- The registration of a class of securities under section 12(g) of the Exchange Act and the corresponding duty to file or furnish reports required by section 13(a) of the Exchange Act;
- The obligation under section 15(d) of the Exchange Act to file or furnish reports required by section 13(a) of the Act regarding a class of equity securities; or
- Both of the above.

A foreign private issuer may also file Form 15F, pursuant to Rule 12h–6(b) (17 CFR 240.12h–6(b)), when seeking to terminate its reporting obligations under section 15(d) of the Exchange Act regarding a class of debt securities.

B. Certification Effected by Filing Form 15F

By completing and signing this Form, the issuer certifies that:

- It meets all of the conditions for termination of Exchange Act reporting specified in Rule 12h–6 (17 CFR 240.12h–6); and
- There are no classes of securities other than those that are the subject of this Form 15F regarding which the issuer has Exchange Act reporting obligations.

C. Effective Date

The issuer's duty to file any reports required under section 13(a) of the Exchange Act will be suspended immediately upon filing the Form 15F. If there are no objections from the Commission, termination of registration of a class of securities under section 12(g) of the Act, or termination of the issuer's duty to file or submit reports under section 15(d) of the Act, or both, will take effect 90 days, or a shorter period as the Commission may determine, after the issuer has filed its Form 15F. An issuer that seeks an effective date sooner than 90 days after filing the Form 15F must submit its request to the Commission in writing. Grant of the Rule 12g3–2(b) exemption will occur upon the effective date of an issuer's termination of Exchange Act reporting pursuant to Rule 12h–6 (17 CFR 240.12h–6).

D. Other Filing Requirements

You must file Form 15F and related materials, including correspondence, in electronic format via our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). The Form 15F and related materials must be in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). You must provide the signature required for Form 15F in accordance with Regulation S–T Rule 302 (17 CFR 232.302). If you have technical questions about EDGAR, call the EDGAR Filer Support Office at (202) 551–8900. If you have questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 551–3610.

If the Form 15F is subsequently withdrawn or denied, you must, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had you not filed the Form 15F. *See* Rule 12h–6(f) (17 CFR 240.12h–6(f)).

E. Rule 12g3–2(b) Exemption

A foreign private issuer that has filed Form 15F to terminate its Exchange Act reporting obligations regarding a class of equity securities shall receive the exemption under Rule 12g3–2(b) (17 CFR 240.12g3–2(b)) for the subject class of equity securities immediately upon the effective date of its termination of registration and reporting under Rule 12h–6. Refer to Rule 12g3–2(e) (17 CFR 240.12g3–2(e)) for the conditions that a foreign private issuer must meet in order to maintain the Rule 12g3–2(b) exemption following its termination of Exchange Act registration and reporting.

PART I

The purpose of this part is to assist the Commission in assessing whether you meet the requirements for terminating your Exchange Act reporting under Rule 12h–6.

Item 1. Exchange Act Reporting History

A. State when you first incurred the duty to file reports required under section 13(a) of the Exchange Act.

B. State whether you have filed or submitted all reports required under Exchange Act section 13(a) and corresponding Commission rules for the two calendar years preceding the filing of this form, and whether you have filed two annual reports under section 13(a).

Item 2. Recent United States Market Activity

State when your securities were last sold in the United States in either a registered or unregistered offering.

Instructions to Item 2

1. For registered offerings, do not include securities sold to your employees or those sold by selling security holders in non-underwritten offerings. If you have registered equity securities on a shelf or other registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) under which securities remain unsold, disclose the last sale of securities under that registration statement. If no sale has occurred during the preceding 12 months, disclose whether you have filed a post-effective amendment to terminate the registration of unsold securities under that registration statement.

2. For unregistered offerings, do not include securities sold to your employees, and securities exempted from registration under section 3 of the Securities Act (15 U.S.C. 77c), except that you must disclose securities sold under section 3(a)(10) of that Act. In addition, do not include securities constituting obligations having a maturity of less than nine months at the time of issuance and offered and sold in transactions exempted from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)).

Item 3. Primary Trading Market

A. Identify the exchange in your home country on which you have maintained a listing of the class of securities that is the subject of this Form. Further provide the date of initial listing on this exchange.

B. Explain whether this home country exchange constitutes the primary trading market for the class of securities that is the subject of this Form.

Instruction to Item 3

When responding to this item, refer to the definitions of ''home country'' and ''primary trading market'' in Rule 12h–6(d) (17 CFR 240.12h–6(d)).

Item 4. Well-known Seasoned Issuer Disclosure

State whether you are a well-known seasoned issuer.

Instruction to Item 4

When responding to this item, refer to the definition of, and time of determination of status of, a ''well-known seasoned issuer'' in Rule 12h–6(d).

Item 5. Comparative Trading Volume Data

A. Identify the last day of the recent 12-month period used to meet the requirements of Rule 12h–6(a)(4)(i)(A) (17 CFR 240.12h–6(a)(4)(i)(A)).

B. For the same recent 12-month period, disclose the average daily trading volume of the class of securities that is the subject of this Form both in the United States and in your primary trading market.

C. For the recent 12-month period, disclose the average daily trading volume of the subject class of securities in the United States as a percentage of the average daily trading volume for that class of securities in your primary trading market.

Instructions to Item 5

1. ''Recent 12-month period'' means a 12-calendar-month period that ended no more than 60 days before the filing date of this form, as defined under Rule 12h–6(d). You may disclose the comparative trading volume data in response to this item in tabular format and attached as an exhibit to this Form.

2. If you are not relying on Rule 12h–6(a)(4)(i), mark Item 5 as inapplicable.

Item 6. Comparative Share Ownership Information

A. Disclose the amount of your outstanding voting and non-voting equity securities, regarding which there is an Exchange Act reporting obligation, held by your non-affiliates on a worldwide basis at a date within 60 days before the end of the 12-month period identified in Item 5 of this Form, or, if Item 5 is inapplicable, at a date within 120 days before filing this Form. Disclose the date utilized for purposes of Item 6.

B. Disclose the amount and percentage of your outstanding voting and non-voting equity securities, regarding which there is an Exchange Act reporting obligation, held by your non-affiliates on a worldwide basis that are held by United States residents at the date identified in Item 6.A.

C. If you are proceeding under Rule 12h–6(a)(6) (17 CFR 240.12h–6(a)(6)), disclose the number of record holders of the subject class of equity securities on a worldwide basis or who are U.S. residents at a date within 120 days before filing this Form.

Instruction to Item 6

1. When determining the number of record holders of your equity securities or the percentage of your outstanding equity shares held by non-affiliates on a worldwide basis that are held by U.S. residents, refer to Rule 12h–6(e) (17 CFR 240.12h–6(e)) for the appropriate counting method.

2. In your response to Item 6.B, specify the provision under Rule 12h–6(a)(4) or Rule 12h–6(a)(5) (17 CFR 240.12h–6(a)(4) or 240.12h–6(a)(5)) upon which you have relied when filing this Form.

3. You need not respond to Items 6.A and 6.B if proceeding under Rule 12h–6(a)(6).

4. If you have relied upon the assistance of an independent information services provider to determine the number of your U.S. resident shareholders or the comparative share ownership information required by this item, identify this party in your response.

Item 7. Debt Securities

Disclose whether you seek to terminate your reporting obligations under section 15(d) of the Exchange Act regarding a class of debt securities. If so, disclose the number of record holders of your debt securities either on a worldwide basis or who are U.S. residents at a date within 120 days before the date of filing of this Form.

Instruction to Item 7.

1. When determining the number of record holders of your debt securities who are U.S. residents, refer to Rule 12h–6(e) for the appropriate counting method.

2. If you have relied upon the assistance of an independent information services provider to determine the number of record holders of your debt securities required by this item, identify this party in your response.

Item 8. Notice Requirement

Disclose the date on which, pursuant to Rule 12h–6(c) (17 CFR 240.12h–6(c)), you have issued a notice, such as a press release, in the United States disclosing your intent to terminate the registration of a class of securities under section 12(g) or your duty under section 15(d) to file reports under section 13(a) of the Exchange Act.

Instruction to Item 8.

If you have submitted a copy of the notice under cover of a Form 6–K (17 CFR 249.306), disclose the submission date of the Form 6–K. If not, you must attach a copy of the notice as an exhibit to this Form. See Rule 12h–6(c).

PART II

Item 9. Rule 12g3–2(b) Exemption

Disclose the address of your Internet Web site or of the electronic information delivery system in your primary trading market on which you will publish the information required under Rule 12g3–2(b)(1)(iii) (17 CFR 240.12g3–2(b)(1)(iii)).

Instruction to Item 9.

Refer to Note 1 to Rule 12g3–2(e) for instructions regarding providing English translations of documents published pursuant to Rule 12g3–2(b)(1)(iii) (17 CFR 240.12g3–2(b)(1)(iii).

PART III

Item 10. Exhibits

List the exhibits attached to this Form.

Instruction to Item 10.

In addition to exhibits specifically mentioned on this Form, you may attach as an exhibit any document providing information that is material to your eligibility to terminate your reporting obligations under Exchange Act Rule 12h–6. You should refer to any relevant exhibit when responding to the items on this Form.

Item 11. Undertakings

Furnish the following undertaking:

The undersigned issuer hereby undertakes to withdraw this Form 15F if, at any time prior to the effectiveness of its termination of reporting under Rule 12h–6, it becomes aware of information that causes it reasonably to believe that:

(1) U.S. residents hold more than the applicable percentage of its outstanding voting and non-voting equity securities held by the issuer's non-affiliates on a worldwide basis as determined under Rule 12h–6(a)(4) or 12h–6(a)(5);

(2) If proceeding under Rule 12h–6(a)(6), its subject class of equity securities is held of record by 300 or more U.S. residents or 300 or more persons worldwide;

(3) Its debt securities are held of record by 300 or more U.S. residents or 300 or more persons worldwide; or

(4) It otherwise no longer qualifies for termination of its Exchange Act reporting obligations under Rule 12h–6.

Instruction to Item 11.

After filing this Form, an issuer has no continuing obligation to make inquiries or perform other work concerning the information contained in this Form, including its assessment of U.S. ownership of its securities.

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, [name of registrant as specified in charter] has duly authorized the undersigned person to sign on its behalf this certification on

Form 15F. In so doing, [name of registrant as specified in charter] certifies that, as represented on this Form, it has complied with all of the conditions set forth in Rule 12h–6 for terminating its registration under section 12 of the Exchange Act, its obligation to file reports required by section 13(a) or section 15(d) of the Exchange Act, or both.

By: _____

Title: _____

Date: _____

By the Commission.

Dated: December 23, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24618 Filed 12–29–05; 8:45 am]

BILLING CODE 8010–01–P



Federal Register

Friday,

December 30, 2005

Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Part 48

Shaft and Slope Construction Workers at Underground Mines and Surface Areas of Underground Mines; Final Rule

30 CFR Part 75

Low- and Medium-Voltage Diesel-Powered Electrical Generators; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 48

RIN 1219–AB35

Training Standards for Shaft and Slope Construction Workers at Underground Mines and Surface Areas of Underground Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: We (MSHA) are revising certain provisions of our regulations addressing the training and retraining of miners. This final rule removes the training exclusion for shaft and slope construction workers. Shaft and slope construction workers will now receive training for new miners, training for experienced miners, task training, annual refresher training, and hazard training. The rule will provide shaft and slope construction workers with the same type of safety and health training afforded other miners.

EFFECTIVE DATE: This regulation is effective June 28, 2006, except that §§ 48.3(o) and 48.23(o) are effective December 30, 2005.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations and Variances, MSHA; 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939; telephone (202) 693–9440; e-mail: *Smith.Rebecca@dol.gov;* or facsimile (202) 693–9441. The final rule is available on the Internet at *http://www.msha.gov/REGINFO.HTM.*

SUPPLEMENTARY INFORMATION: The preamble to this final rule discusses the proposed requirements for training shaft and slope construction workers, comments received on the proposed rule, our analysis of accident and injury data, and the section-by-section discussion of our final rule determinations. To help the reader, the preamble discussion follows this outline:

I. Background
II. Discussion of Final Rule
A. Introduction
—Analysis of accident and injury data
—Comparative tasks and hazards
—Diverse small and mobile crews
—Applicability of part 48 training
1. Miners' Rights
2. Self-Rescue and Respiratory Devices
3. Entering and Leaving the Mine; Transportation; Communications
4. Introduction to the Work Environment
5. Mine Map; Escapeways; Emergency Evacuation; Barricading
6. Roof or Ground Control and Ventilation Plans
7. Health
8. Clean-Up; Rock Dusting
9. Hazard Recognition
10. Electrical Hazards
11. First Aid
12. Mine Gases
13. Health and Safety Aspects of Tasks
14. Other Courses Required by the District Manager
—Compliance Assistance
B. Section-by-Section Analysis
1. Sections 48.2(a)(1) and 48.22(a)(1) Definitions
—Clarification of terms
—Coverage of all construction workers and Subpart C
—Comprehensive training or hazard training
—Applicability of Part 48 subpart A training (Underground) and subpart B training (Surface)
2. Sections 48.2(b)(4) and 48.22(b)(4) ''Experienced Miner''
—Qualifications and grandfather provision
3. Sections 48.3 and 48.23 Training Plans
a. Shaft and Slope Training Plans
b. Training Plan Development, Submission and Approval
c. Training Programs and Hours
d. Crediting Prior Training and Experience
e. Approved Instructors
4. Sections 48.8 and 48.28 Annual Refresher Training
5. Effective Date
III. Executive Order 12866
IV. Feasibility
V. Regulatory Flexibility Act Certification
VI. Paperwork Reduction Act of 1995
VII. Other Regulatory Considerations
A. The Unfunded Mandates Reform Act
B. National Environmental Policy Act
C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
E. Executive Order 12988: Civil Justice Reform
F. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
G. Executive Order 13132: Federalism
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use
J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking
VIII. Regulatory Text

I. Background

On October 13, 1978, we promulgated regulations concerning the training and retraining of miners in Title 30 Code of Federal Regulations (CFR) part 48 (43 FR 47453), as provided for in section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 825. Section 115(d) also provided that the Secretary of Labor promulgate ''appropriate standards for safety and health training for coal or other construction workers.'' Accordingly, we determined that certain underground mine construction workers were exposed to significant mining hazards in ongoing operations, and included those construction workers under the coverage of part 48 training standards published in 1978. However, we specifically excluded from the coverage certain other construction workers including shaft and slope construction workers.

On September 30, 1999, we published a final rule, 30 CFR part 46, (64 FR 53080), containing training requirements for specific sectors of the mining industry, including shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines. That rule covers, among other miners, construction workers who are exposed to hazards of mining operations.

Following the January 2003 accident that occurred during shaft construction at the McElroy Mine, we reviewed mine fatality records from January 1982 through August 2003. The review indicated that miners performing shaft and slope construction work should receive the same training as other underground and surface miners. On July 16, 2004, we proposed to remove the part 48 training exclusion for shaft and slope construction workers (69 FR 42841). Under the proposed rule, shaft and slope construction workers would be treated like extraction and production miners and subject to the part 48 training requirements.

The public was invited to submit comments. We held hearings in Salt Lake City, Utah on August 24, 2004, and Arlington, Virginia on August 26, 2004. The hearing record remained open until September 14, 2004 for post-hearing comments. Eight persons presented oral comments at the hearings, and we received six written comments. Most of the commenters were from the shaft and slope construction industry. All of the comments have been considered in the development of this final rule.

II. Discussion of Final Rule

A. Introduction

The final rule eliminates the part 48 training exclusion found in §§ 48.2(a)(1)(i) and 48.22(a)(1)(i) for shaft and slope construction workers. ''Shaft and slope construction workers'' include ''shaft and slope workers'' and ''workers engaged in construction

activities ancillary to shaft and slope sinking.'' Under this final rule, these miners will receive comprehensive safety and health training like other miners who are significantly exposed to mining hazards. Shaft and slope construction operators, like other mine operators, must train their miners according to an MSHA approved training plan.

There is a clear need for this rule. As discussed in the preamble to the proposed rule (64 FR 42841), we reviewed mine accident fatality records from January 1982 through August 2003. In that period, there were 15 fatalities among miners performing shaft and slope construction work, including the shaft construction accident at McElroy Mine in West Virginia in January 2003 that took the lives of three miners. One commenter took exception to the inclusion in our fatality data of four miners who were fatally injured in capping a shaft at the Blacksville No. 1 mine in 1992. The commenter contended that this event involved construction work in and around a surface mine, and had nothing to do with the actual mining process or the development of the shaft. While it is true that the operator was closing a shaft, we believe that shaft construction can reasonably include such additional construction necessary to effect closure.

Some commenters maintained that this rule is not appropriate for the shaft and slope construction industry. They said that the rule would be burdensome and our estimated costs were too low. In calculating the costs of the proposed rule, we used mining industry-wide data as the basis for turnover rate, retention rate, and miners' level of experience. The commenters, however, disputed these assumptions as inaccurate for the shaft and slope sector. Based on their comments and our reanalysis of the data, we have recalculated the costs of the rule and, while having increased our cost estimates, we have concluded that the rule is economically feasible, as explained in Section III in this preamble and in the Regulatory Economic Analysis (REA).

Analysis of Accident and Injury Data

Commenters were concerned about the appropriateness of the 40 hour new underground miner training requirement. In response to these comments, we further analyzed the accident rate data for new miners obtained from our part 50 database (Notification, Investigation, Reports and Records of Accidents, Injuries, Illnesses, Employment, and Coal Production in Mines) for the period January 1994 through March 14, 2005. Mine operators and independent contractors, including shaft and slope construction operators, are required to file these reports.

The purpose of this analysis was to further evaluate the need for comprehensive training. This analysis is a snapshot of a subset of the current shaft and slope industry. It is indicative of safety performance.

There were 219,703 accidents reported in the period, January 1994 to March 14, 2005. For comparative purposes we did a separate analysis of: (1) Employee accidents from all mining operations, (2) six shaft and slope construction companies, five of which, according to one commenter represented the majority of the shaft and slope industry, and (3) all independent contractors excluding the six shaft and slope construction companies. We eliminated all records where no data was entered in the field for ''Total Mining Experience.'' We counted all reported accidents of miners, shaft and slope construction workers, and independent contractors with one year or less of total mining experience. Table 1 outlines the results of our analysis:

TABLE 1.—REPORTED ACCIDENTS—MINERS WITH LESS THAN ONE YEAR OF TOTAL MINING EXPERIENCE

Class	Total accidents reported	1 year or less	Percent
Mine Employees [1]	161,160	19,783	12.27
Independent Contractor Employees [2]	11,542	3,699	32.05
Shaft and Slope Employees	583	257	44.08

[1] Excludes independent contractors and the six shaft and slope construction companies.
[2] Excludes shaft and slope construction companies.

We found that in the mining industry, excluding all independent contractors, new miners account for 12.27% of the total reported accidents for that group. For independent contractors, excluding shaft and slope companies, new miners were involved in 32.05% of the total. By contrast, new shaft and slope construction workers accounted for 44.08% of the total accidents reported for that group.

We further reviewed the nonfatal days lost (NFDL) injury incidence rate for six shaft and slope construction companies, and compared their rates to the average rates for all underground and surface areas of underground coal mines and metal/nonmetal mines. These incidence rates, which represent the number of NFDL injuries per 200,000 miner hours, are calculated from the part 50 accident reports submitted to us and cover injuries of all miners, including experienced miners. The results are summarized in Table 2.

TABLE 2.—NFDL INCIDENCE RATES

Year	Metal UG & surf. at UG operations	Coal UG & surf. at UG operations	Shaft & slope
2003	3.98	6.44	9.45
2002	3.69	7.44	16.79
2001	3.82	7.32	9.72
2000	5.38	8.34	18.66
1999	5.82	8.16	20.26
1998	6.09	8.82	13.37
1997	5.48	8.28	10.44
1996	6.31	8.7	15.93

TABLE 2.—NFDL INCIDENCE RATES—Continued

Year	Metal UG & surf. at UG operations	Coal UG & ≤ surf. at UG operations	Shaft & slope
1995	5.79	10.18	13.7

The injury rate for shaft and slope construction is higher than the rest of the mining industry. The results from both tables 1 and 2 indicate that shaft and slope work is dangerous and that shaft and slope miners should be provided the same comprehensive training as other miners.

We received comments suggesting that the hazards shaft and slope construction workers face are distinguishable from those faced by other miners. To address these comments, we further reviewed the data from January 1994 through March 14, 2005 for the type of accident classifications these three groups had reported. Table 3 outlines the findings.

TABLE 3.—TOP FIVE ACCIDENT CLASSIFICATIONS

Ranking	Accident classification	Mining operations (percent)	Independent contractors (percent)	Shaft & slope construction operations (percent)
1	Handling of Materials	32.44	31.87	27.24
2	Slip or Fall Of Person	18.19	20.74	17.90
3	Machinery	13.49	14.95	26.46
4	Handtools (nonpowered)	12.46	11.68	6.23
5	Powered Haulage	8.74	9.33	5.45

As indicated in Table 3, mining operations, independent contractors, and shaft and slope construction operations have the same top five accident classifications. While the comparative percentages may vary between mining sectors, the data generally indicate the similarities in accident types throughout mining, including shaft and slope construction.

One commenter said that hazards from working at heights distinguish shaft and slope construction from other mining. Yet, the data in Table 3 suggest that, to the extent slip and fall hazards correlate to heights, all miners experience about the same percentage of slip and fall accidents.

Comparative Tasks and Hazards

In proposing the rule, we found that the tasks performed and hazards encountered by shaft and slope construction workers were similar to those of other miners already covered under the part 48 training provisions. Commenters stated, however, that shaft and slope work is unique from mining and should have its own training requirements. They said that special training requirements for their industry should be incorporated under a new part 48, subpart C. Commenters said that shaft and slope construction work is like other mine construction work and differs from mining. Specifically, the commenters noted particular tasks and hazards characteristic of shaft and slope work, which takes place in a ''vertical environment.'' The commenters also cited hazards incident to heights, lifting, uneven ground, pinch points, chemicals, noise, mine gases, compressed air, hoisting, and electricity. But these hazards are found in other types of mining operations, where miners work in confined spaces, handle materials, work in proximity to mobile equipment, and with and around wire rope, and explosives and blasting and encounter falling or sloughing material from roof and ribs.

The commenters also mentioned certain tasks specific to shaft and slope construction, including welding, hoisting, drilling, blasting, and mucking. While there may be some tasks that are more characteristic, in degree or kind, to shaft and slope work, similar tasks are conducted at other mining operations. For example, in many cases shotcreting and mucking done in shaft and slope work is like shotcreting and mucking done by ''muckers'' in other mining operations. Both shaft and slope construction operations and active mines drill, blast, and muck.

Diverse Small and Mobile Crews

Commenters described a diverse shaft and slope construction industry, encompassing various locales, projects, mining methods and crews. The commenters were concerned that one type of training would not fit all.

Mining operations, which are already subject to part 48, range from massive underground coal mines to small surface hard rock operations in remote areas. These mining operations employ a variety of mining methods and tasks, exposing miners to a broad array of safety and health hazards that are addressed under the flexible training approach of part 48. Similarly, part 48 applies to different types of mine operators in different settings, including a variety of independent contractors who are on mine property temporarily. Some mobile equipment operators, for example, travel to different sites, and may not have a formal office. For over 26 years, part 48 has successfully covered mining operations of varying sizes, locations, circumstances, and conditions.

Commenters pointed to high turnover rates in certain types of shaft and slope construction operations, especially conventional underground work. They were especially concerned about the availability of trained labor in remote areas. Shaft and slope crews may be small, they said, and dependent upon all miners showing up ready to work for the project to progress on time.

There are many independent contractors in mining working in small crews. It is our understanding that these mining operations may hire from a local labor force that has already received 32 hours of underground new miner training. The training may be provided through vocational-technical schools or cooperative programs. Typically, where state grant programs provide this training, they offer 32 hours of new miner training for underground mining at a reasonable cost or for no cost. With

32 hours of training completed, 8 hours of mine site training are given by the operator. These new miner training programs available to the industry have helped create the labor pool that operators may draw from quickly.

We are mindful that causes for crew shortages extend beyond turnover and training, for example, sickness and personal emergencies. Short-term crew shortages commonly are handled by cross-shifting the miners.

We expect training may facilitate a ready labor pool. Training could alert prospective miners about a job that is not right for them, causing them to withdraw from consideration. By taking the initiative to be trained, new miners may be less likely to prematurely leave a job for which they have invested an amount of time and possibly money prior to employment. Further, contractors may retroactively compensate miners for the training costs after working a specified period of time. This may reduce the high turnover rates experienced by the industry.

We understand that small crews are particularly characteristic of raised bore drilling, which constitutes a small proportion of shaft and slope construction projects. We also understand that this type of shaft and slope work does not experience the turnover rate of conventional projects. Raised bore drilling is mainly from the surface; therefore, the 24-hour new miner training applies. This allows, with District Manager approval, for 8 hours of pre-work training, with the remaining 16 hours to be done within 60 calendar days following assignment (known as the 8/16 split). This training conforms to the preferred approach advocated by commenters who give their miners 8 hours of orientation training and then proceed to train them incrementally following assignment.

Applicability of Part 48 Training

Several commenters questioned the subject-matter applicability of part 48 training to shaft and slope construction work. They said that part 48 training was designed for ''miners'' and is not relevant or useful to shaft and slope construction workers. The commenters' primary concern, however, appears to be the 40 hour requirement (in existing § 48.5) for new underground miners.

We considered the relevance to shaft and slope construction operations of each of the courses required in the new miner training program under existing § 48.5. Following is a discussion of the applicability of the existing § 48.5 new miner training requirements to shaft and slope construction workers.

1. *Miners' rights*—This course provides all miners with important information on supervisory responsibilities, company policies, and Mine Act rights impacting safety and health, such as protection in reporting hazardous conditions.

2. *Self-rescue and respiratory devices*—These devices are important for all miners working in an underground mine, including drillers and blasters. The training can be vital for shaft and slope miners because their work area is essentially a ''one entry'' system. In addition, if the shaft and slope intersects with an existing mine, there is exposure to that mine's atmosphere.

3. *Entering and leaving the mine; transportation; communications*—While we recognize that some shaft and slopes are not complex, shaft and slope miners need to be instructed in how to safely enter, exit, and handle buckets, cages, or other conveyances, as well as hoists and cranes. Also important is their knowledge of the differences between transportation of personnel and material, as well as communication systems, such as how to operate the bell system and use a pager telephone. Instruction in the use of a workdeck is needed, especially when the workdeck is the secondary means of exit from a shaft.

4. *Introduction to the work environment*—This course is mine-specific, focusing on a representative part of the operation and mining method used. Mine operators cover this training during the mine-site training required by part 48. For shaft and slope work, it could emphasize the confined spaces involved and provide some appreciation of the associated hazards. The new miner could observe hoisting activities and became familiarized with the equipment, particularly pneumatic equipment used in shaft and slope work. We recognize that shaft and slope construction, like other mining, goes through different phases and that training for those environments can also be covered in subsequent annual refresher training and new task training.

5. *Mine map; escapeways; emergency evacuation; barricading*—This course focuses on emergency procedures, which all types of operations must have. The confined spaces and limited means of access in shaft and slope construction can make an emergency even more significant. As with all mining operations, applicable training adapted to the particular operation is the objective.

6. *Roof or ground control and ventilation plans*—This course covers key features regulating ground control and ventilation. At coal mines, these features are described in the plan submitted by the shaft and slope construction operator as required by 30 CFR part 77, subpart T (Slope and Shaft Sinking). Roof and ground conditions are constantly changing in shaft and slope work, and miners are regularly exposed to unsupported ribs during the drill-blast-muck-line shaft cycle. Miners need to be instructed in examination methods, so they can recognize failing or inadequate roof support and maintain adequate ventilation.

7. *Health*—This course covers the purposes of taking exposure measurements, which is required as part of the shaft and slope construction plan for coal mines. Shaft and slope miners are commonly exposed to dust, noise, and chemicals. They are exposed to dust while drilling and mucking, and may be involved in activities that exceed noise action levels. The training also includes the operators' hazard communication program, which is vital for shaft and slope miners who work with and around oils, diesel fuel, concrete additives, and other hazardous chemicals.

8. *Cleanup; rock dusting*—Cleanup is essential on a workdeck or elevated platform to remove tripping hazards and falls from elevations, and to prevent loose materials from falling and striking someone below. Water may make the workdeck extremely slick, and good housekeeping minimizes slipping hazards. The rock dust component of this training applies to those shaft and slope projects involving rock dusting. When shaft and slope development reaches a coal seam, the rock dusting program becomes important for miners who may spend considerable time in a ''coal environment.''

9. *Hazard recognition*—This is key training in any safety and health program. Shaft and slope construction hazards, like those of other mining operations, involve working in confined spaces, handling materials, and working in proximity to mobile equipment. The hazards also include slips and falls, falling or sloughing materials from roof and ribs, hoisting and wire rope hazards, and methane. Other hazards characteristic of shaft and slope operations are hazards incident to height, compressed air, and working under suspended loads. The course especially mentions hazards relating to explosives. This is important training because blasting is a prominent feature of many shaft and slope projects.

10. *Electrical hazards*—While the only electricity used underground may be the blasting cable, blasting may be a prominent feature of the work and may

be conducted around water. A number of sources of electricity are typically found on the surface. Surface operations commonly have an electrical substation. There are also circuit breakers for the fan, hoist, compressors, and other equipment that needs to be energized and de-energized. Anyone working in or around the hoist house, in particular, should be instructed on the electrical hazards. Commenters mentioned that they commonly face shock and electrical hazards in shaft and slope construction.

11. *First aid*—This training applies to all mine environments and persons working on mine property. In shaft and slope construction, transporting an injured person can be problematic because of the difficulty in getting the person into a bucket or carrying the person out of a slope for which the means of egress is walking. Shaft and slope crews frequently are small, with only one person fully qualified to administer first aid. This increases the importance of first aid training for the other miners.

12. *Mine gases*—Shaft and slope miners may work in methane and oxygen deficient atmospheres. Gases have been, and continue to be, a problem in some shaft and slope operations. Shaft and slope companies recognize this problem and, as applicable, are required to submit shaft and slope plans addressing methane and oxygen deficiency tests. There may be other workplace exposures, such as diesel equipment exhaust gases.

13. *Health and safety aspects of tasks*—This course is practically oriented to the specific duties that new shaft and slope miners will be performing. As miners are assigned new tasks, they will also receive new task training, including health and safety aspects of those tasks.

14. *Other courses required by the District Manager*—When additional training is required, it should be focused on the particular training needs of the operation. Circumstances may justify, for example, having special emphasis training on scaling, fall protection, rigging, compressed air, explosives, or hoisting.

As described above, part 48 new miner courses are relevant and flexible to the needs of shaft and slope miners. The training serves as a general primer for introducing new shaft and slope construction miners to hazards they are likely to face and the ways those hazards can be effectively avoided. The training also provides an overview of mining methods, conditions, and circumstances that can be problematic to persons new to mining. Such training takes time to accomplish and we believe 40 hours is appropriate to prepare a new miner for the rigors and hazards of a dangerous underground environment.

We also note that some shaft and slope projects occur around other mining operations. Other mine personnel may assist the shaft and slope workers. For example, ream cuttings from raised drill work commonly are removed by mine personnel. It is important that the shaft and slope construction workers be fully trained so that they do not present a hazard to themselves or to the other miners.

Part 48 does not force operators to provide training that does not apply to their operations. We recognize that different mining operations have different training needs and should emphasize different aspects of the training. It is left primarily to the mine operator to provide training that is meaningful to the miners within the course framework of part 48. Part 48, in effect, requires that the subject matter be relevant to the particular mining operation. As one industry commenter observed, part 48 is a ''container that all sorts of types of training could go into.''

A commenter questioned whether the absence of training contributed to fatalities. Section 115 of the Mine Act specifically recognized the role training plays in mine safety. While, in 1978, we promulgated part 48 training regulations, in many cases part 48 training did not begin until late in 1979. In 1979 there were 267 mining related fatalities. Twenty-four years later, in 2003, the mining industry recorded 56 fatal accidents. Further, at underground and surface areas of underground mines there were 18,873 nonfatal days lost (NFDL) in 1979 and 3,043 in 2003.

As indicated in Table 3, operations that are required to conduct part 48 training have experienced a lower NFDL incidence rate. While we do not believe training was the only reason for the reduction in accidents, we believe it has played a significant role.

We acknowledge that shaft and slope construction operators already provide some training. However, by requiring part 48 training for shaft and slope construction workers, we ensure they receive the same type of safety and health training as all other miners. Requiring part 48 training assures that shaft and slope construction workers will receive the training they need on a timely basis from approved instructors.

Section 101(a)(9) of the Mine Act provides that no promulgated standard shall reduce the protection afforded miners by an existing mandatory health or safety standard. By promoting consistent, comprehensive training for miners previously excluded, the final rule increases health and safety protections for miners, and is fully consonant with Section 101(a)(9).

Compliance Assistance

We will offer compliance assistance to the shaft and slope construction operators. Our Educational Field Service will assist with the assessment of training needs and in developing training programs for shaft and slope construction operations. Additionally, other resources are available for developing training such as the American National Standards Institute criteria (ANSI Z490.1–2001) as suggested by one commenter.

B. Section-by-Section Analysis

1. Sections 48.2(a)(1) and 48.22(a)(1) Definitions Shaft and Slope Construction Workers as ''Miners''

Existing §§ 48.2(a)(1) and 48.22(a)(1) contain the definition of ''miner'' under part 48. We proposed to delete the exclusion contained in subparagraph (i), for ''shaft and slope workers'' and, for underground, ''workers engaged in construction activities ancillary to shaft and slope construction.'' The definition of ''miner'' for training purposes would include any person engaged in shaft or slope construction. The final rule is unchanged from the proposed rule.

A commenter said that shaft and slope construction workers are not ''miners'' and should not be subject to training requirements for miners.

Section 3(g) of the Mine Act defines ''miner'' as any individual working in a mine. Additionally, Section 3(h)(1) of the Mine Act defines ''mine'' to include, among other things, any shafts, slopes, facilities, and equipment used in or to be used in mining. Section 115(d) discusses rulemaking for mine construction workers. Congress recognized that construction work is a part of mining. The terms of the Mine Act encompass shaft and slope construction workers, both surface and underground, as ''miners.'' The Mine Act's implementing regulations and standards found in 30 CFR apply to shaft and slope and other construction operations. For example, the training requirements under 30 CFR part 46 cover construction workers exposed to hazards of mining operations.

Clarification of Terms

A commenter requested that the term ''shaft and slope workers'' appearing in the current exclusion be clarified. Another commenter asked what is intended by ''ancillary'' construction activities. Yet another commenter said

that ''shaft and slope construction'' should be defined, and another inquired about including preliminary work.

In response, we have taken the terms from the current training exclusion, ''shaft and slope workers'' and, additionally for underground, ''workers engaged in construction activities ancillary to shaft and slope sinking,'' and referred to them as ''any person * * * engaged in shaft and slope construction,'' or ''shaft and slope construction workers.''

Shaft and slope workers'' refers to miners involved in shaft and slope construction activities such as: drilling, blasting, mucking, loading, installing equipment in the completed shaft or slope, opening up the excavation, sinking and lining a hole, grouting the shaft, and installing panning, shaft steel, and the fan over the shaft or hoist.

In addition to the construction activities listed above, ''shaft and slope construction work'' encompasses construction incidental to sinking the shaft or slope and is commonly performed by shaft and slope contractors. On the surface, this includes construction such as building a hoist house or installing a permanent hoist. In the underground context, this construction was referenced in the existing rule as ''ancillary'' construction activities and includes construction such as the building of equipment housing or mine shaft facilities.

Shaft and slope construction activities pertain to the various types of shaft and slope operations, including conventional, raised bore drilling, and blind drilling, as applicable. The approach is functional; thus a company may do any number of activities and be considered involved in shaft and slope construction work. A shaft and slope construction company may contract with other companies to do some of these activities, in which case all of the companies would be performing shaft and slope construction work. Shaft and slope construction work does not include preliminary work, such as road building, timbering, and site clearance, typically not performed by shaft and slope construction operations.

Coverage of All Construction Workers and Subpart C

Commenters said that special training requirements should be developed and applied to all mine construction workers, not just shaft and slope construction workers, and contained in a new subpart C to part 48. Some commenters stated that the Mine Act requires separate training standards for construction workers.

In addressing these comments we point to Section 115(d) of the Mine Act, which authorizes us to issue ''appropriate'' construction training standards. There is no statutory requirement for training standards that apply exclusively to mine construction workers. As we previously stated, the part 46 miner training requirements apply to construction workers at covered operations. Likewise, as explained in this preamble, experience has shown that shaft and slope construction workers perform work and face hazards similar to other miners and should receive similar training. Moreover, most shaft and slope construction workers perform work underground, and the Mine Act acknowledges that such construction workers may not be practicably differentiated from other underground miners. Indeed, the legislative history of the Mine Act evidences a congressional belief that underground construction workers generally face the same hazards as do other underground miners.

A commenter said that the part 48 training exclusion should be eliminated for all mine construction workers, not just those engaged in shaft or slope construction.

We have analyzed the accident and injury data for shaft and slope construction workers and we believe it supports the need to eliminate the training exclusion for them. However, we are not prepared at this time to expand the rulemaking to cover other construction workers. Any rulemaking for other mine construction workers is reserved for future consideration consistent with Section 115(d) of the Mine Act.

Comprehensive Training or Hazard Training

We proposed to apply the comprehensive training requirements of part 48 to all shaft and slope construction workers. Consequently, they would receive new miner, experienced miner, task, and annual refresher training, as applicable. One commenter suggested that only hazard training would be appropriate for persons working on-site for five days or less. Like extraction and production miners, shaft and slope construction workers face hazards that are significant. The final rule accordingly requires all shaft and slope construction workers to complete comprehensive training without regard to the amount of time spent on-site. However, we recognize that shaft and slope construction companies may contract out some maintenance and service jobs. In keeping with existing requirements, such maintenance or service contractors, who are not at the mine for frequent periods or extended periods of more than five days, would receive hazard training, and not be required to receive comprehensive training.

Further, the final rule, like the proposed rule, applies the short-term specialized contractor provision in §§ 48.2(a)(1) and 48.22(a)(1) to shaft and slope construction workers who move from site-to-site. Such miners who have received experienced miner training could receive hazard training at each new site. There was no comment on this provision and the final rule remains unchanged.

Applicability of Part 48 Subpart A Training (Underground) and Subpart B Training (Surface)

Many shaft and slope construction workers work underground. Subpart A training would apply to them. Commenters pointed out that there are some types of shaft and slope construction operations, such as blind drilling operations, where the miners are only on the surface. In those cases, subpart B training would apply.

Most shaft and slope construction workers perform both surface and underground work. There are shaft and slope miners who, for example, mobilize a project by building surface facilities in preparation of shaft sinking, and then proceed to work underground. Commenters asked whether both subpart A training and subpart B training would apply, and if new miners falling under both sections would have to take a possible total of 64 hours of training before being assigned work duties. Additionally, a commenter asked whether those individuals who completed the training would be considered both experienced underground and surface miners.

A new miner training program of 40 hours would suffice for these miners, but only to the extent that the miners are specifically hired to work both on the surface and underground. This training would not apply, for example, to surface miners who are only subject to subpart B training, and are later reassigned to work underground (these miners would then have to take training for new underground miners).

The focus of the training is flexible and should reflect the needs of the miners. As underground activities are emphasized, we anticipate that the training will focus on the underground duties, with some surface training. For example, initial practical orientation at the beginning of a project could contain instruction germane to an underground environment, such as fall protection,

rigging, and familiarization of equipment, tools, and safety procedures, such as bell signals. These miners will be considered underground miners for training purposes. After they complete the training, they can work at surface areas of a shaft or slope construction site or underground. Once these miners have worked 12 months at a shaft or slope construction site or in an underground mine, they will be considered experienced underground miners for life.

2. Sections 48.2(b)(4) and 48.22(b)(4) ''Experienced Miner'' Qualifications and Grandfather Provision

Existing §§ 48.2(b) and 48.22(b) define ''experienced miner'' as: (1) A miner who has completed MSHA-approved new miner training or training acceptable to MSHA from a State agency, and who has had at least 12 months of mining experience; (2) a supervisor who is certified under an MSHA-approved State certification program and who is employed as a supervisor on October 6, 1998; or (3) an experienced miner on February 9, 1999.

We proposed to amend 48.2(b) and 48.22(b) to add a new paragraph (b)(4) specifying that miners employed as shaft and slope construction workers on the effective date of the final rule are ''experienced miners.''

Commenters said that the proposed rule was too limited and did not recognize the transient nature of shaft and slope construction work. They suggested an additional grandfather provision for miners who have six months experience within the 24 month period before the effective date of the rule. We agree. The final rule specifies that shaft and slope construction workers, either who are employed on the effective date of this rule, or who have six months of shaft or slope construction experience within the 24 month period before the effective date, are ''experienced miners.'' The final rule makes clear that an ''experienced miner'' status for surface or underground purposes is accorded to current surface workers or underground workers, respectively. This grandfather provision is intended to recognize previous experience of those miners who are already employed in shaft and slope construction.

One commenter suggested the grandfather provision be expanded to include all shaft and slope construction workers regardless of when they were employed. The commenter also recommended that Occupational Safety and Health Administration (OSHA) training in the previous 12 months and 12 months cumulative experience should qualify shaft and slope construction workers as ''experienced.''

We do not believe that such expansion of the grandfather and ''experienced miner'' provisions for shaft and slope construction is justified. The grandfather provision should be limited to those miners who currently are or recently have been a part of shaft and slope construction. We are mindful, however, that shaft and slope construction is no less dangerous than extraction and production and other mine contract work. The experienced miner requirements for shaft and slope construction workers generally should be like those of other miners. Moreover, the training they receive needs to be appropriate for mining.

Some commenters were concerned that the status of being an ''experienced miner'' may not be permanent for shaft and slope construction workers. Consistent with the current rule, the final rule provides that once a miner is an ''experienced miner,'' that miner is always an ''experienced miner'' for training purposes.

The final rule retains the approach of the current rule under which there are two basic ways of becoming an ''experienced miner'': Through the grandfather provision, or through a combination of training and experience. Once a shaft and slope construction worker is an ''experienced miner'' for underground or surface purposes, that status carries over to other underground or surface mining operations, respectively. Similarly, an experienced miner coming from another type of mining operation is considered an experienced miner for shaft and slope construction.

3. Sections 48.3 and 48.23 Training Plans

a. Shaft and Slope Training Plans

Sections 48.3 and 48.23 require each mine operator to have an MSHA-approved plan containing programs for new miner training, experienced miner training, new task training, annual refresher training, and hazard training. The standards contain the specific requirements for filing, approval and disapproval of training plans, and commencement of training.

We proposed a new paragraph (o) that would require shaft and slope construction operators to have an approved training plan. This was implementing language, allowing a reasonable amount of time for operators to obtain an approved plan. The final rule retains this provision.

Several commenters expressed concern that this would mean they would be required to have a new plan developed and approved for each new project. Like other independent contractors that are mobile and work at different sites, the shaft and slope construction operators can have one training plan for all of their project sites.

Some shaft and slope construction operators work in different MSHA districts, and commenters were concerned about varying interpretations affecting approval from the districts. A plan approved in one MSHA district is considered approved in all other MSHA districts.

Commenters also said that shaft and slope construction operators should have the option to have their own plan or use the plan of other mine operators. Consistent with the existing rule and practice for other mine operators, shaft and slope construction operators may opt to have their own plan or use the plan of another operator or programs of a cooperative, provided that the plan adequately addresses hazards characteristic of the shaft and slope construction work (existing §§ 48.4 and 48.24).

b. Training Plan Development, Submission, and Approval

We proposed in the new paragraph (o) to allow current shaft and slope construction operators 120 days from the date the final rule is published, unless extended by us, to submit a training plan. There were no adverse comments on the proposed provision, and the final rule remains unchanged. The shaft and slope construction operators are subject as well to existing plan development requirements of notice and posting under §§ 48.3(d)/48.23(d).

Some commenters were concerned about the applicability of the training plan requirements to the schedule of shaft and slope construction projects. One commenter indicated the requirements of plan development, such as the two week notice to miners' representatives, would be impractical. Another commenter supported the 120 day timeframe but said that we should waive this provision on a case-by-case basis to accommodate new shaft and slope construction projects started on short notice.

We believe the requirements are reasonable. They have been applied successfully to other independent mine contractors who acquire work on short notice. Miner input into training will be no less valuable in shaft and slope construction than in other mining operations. Shaft and slope construction contractors can use one plan to basically cover all projects and do not need to

constantly create new plans as they move from mine to mine.

Under the proposed rule, new operators must have a training plan prior to commencing operations. This is consistent with the requirement for other mining operations. We did not receive any comments on this provision. We have added the date of 180 days after the rule's publication to clarify what is meant by a ''new'' operator. Otherwise, the provision remains unchanged in the final rule.

For a new shaft and slope construction operation that begins work after the publication date and before [insert date 180 days after the date of publication] we will allow the same number of days as existing operators to submit a plan (120 days), commencing from the work starting date.

c. Training Programs and Hours

Under the proposed rule, the required training plan would contain programs for training new miners, training experienced miners, task training, annual refresher training, and hazard training. The final rule retained these requirements.

The new miner training requirements drew numerous comments. They said that the requirements of 40 hours for underground and 24 hours for surface are excessive and unduly focus on classroom instruction.

Those hour requirements are in the current rule covering other mining operations and are taken from section 115(a) of the Mine Act. Congress felt they were appropriate for new miners entering into a hazardous environment. New shaft and slope construction miners, like other miners, work in a dangerous environment and are exposed to potentially lethal hazards. These miners must receive the amount of training necessary for them to adequately cope with the hazards of their job.

While many mine operators take advantage of classroom instruction, there is no requirement for classroom training. The regulations provide that the training must duplicate the actual mining conditions to the extent practicable and approximately 8 hours of training is to be conducted at the mine.

Commenters stated that the part 48 new miner training places too much emphasis on training before assignment to duties. They said that training is more effectively done in intervals while on-the-job. One commenter remarked about the short attention span of workers. Commenters said they have, for example, 4 to 8 hours of orientation training, task training over a number of shifts with recorded supervisor observations, and safety training at periodic meetings.

Constructing a shaft or slope can present a work environment where hazards may not be easily identified without advance training. Shaft and slope construction workers, like other miners, are not necessarily presented hazards one at a time, but may be exposed to several hazards at once (unstable ground, tripping, gases, and mobile equipment, for example). New shaft and slope construction workers, like other new miners, should not be subject to work hazards before they are fully trained. The Mine Act contemplates that a significant amount of training, particularly new miner training, be done in sessions set aside for training rather than simply ''on-the-job'' with attendant exposure to job hazards.

Part 48 training also includes training after assignment to work duties as well as training in intervals. The training for surface miners permits the 24 hours of new miner training to be split. Eight hours can be given to the miner at the mine site immediately before being assigned work duties, and then 16 hours of training thereafter. In both underground and surface training, miners can take periods of annual refresher training (§§ 48.3(c)(7) and 48.23(c)(7) and §§ 48.8(e) and 48.28(e)). Additionally, they receive new task training, as applicable, which may include supervised equipment operation on-the-job. If operators want to provide additional training, they are free to do so. The flexible framework of part 48 allows operators to provide beneficial training beyond what is required.

d. Crediting Prior Training and Experience

One commenter, citing our approach for training under part 46, said that previous training and experience should be taken into account and applied toward meeting the requirements for new miner training and annual refresher training. The commenter indicated that new shaft and slope construction workers may already have had some task experience and training, particularly OSHA training, which would remain relevant to their mining jobs. Another commenter claimed that tunneling is relevant experience for mining. And another commenter said that past training from other contractors should be credited.

While we want to avoid undue duplication of training, we are mindful that a mining environment may present unique circumstances and hazards. Those aspects of mining are usually best addressed in training designed specifically for mining. Having instructors approved to teach mining courses provides a qualitative factor not available in other training.

On the other hand, there are subjects, such as first aid, that are more generic in nature and essentially apply in any type of work environment. We are aware that shaft and slope construction workers previously may have received some occupational training that is relevant to mining.

Balancing these considerations, we may grant partial credit in certain instances. Generic training courses such as first aid will be credited (this includes qualifications obtained more than a year before, but which are still current). Other training, particularly from OSHA and state OSH sources, may be considered for credit upon application.

We recognize that some jobs are similar whether in a mining or non-mining environment. We already allow operators to credit pertinent prior experience for some miners in order to meet the experience requirements under existing §§ 48.5 and 48.25.

Likewise, we will allow shaft and slope construction operators to credit relevant job experience. Operators should evaluate the experience as to the similarity of work environment, the hazards encountered, and the work skills and practices used.

e. Approved Instructors

Consistent with existing part 48, much of the training required by the final rule must be conducted by MSHA-approved instructors (§§ 48.3(i) and 48.23(i)). A commenter said that it will be extremely impractical for construction companies to get their own personnel ''MSHA approved'' as instructors in a timely manner, when they may only perform one or two jobs at a mine in the entire business life-cycle. The commenter said that the rule should allow ''competent persons'' and OSHA instructors to conduct the training. This would allow for comparable expertise and take into account the realities of shaft and slope construction work, which often demands the availability of varying crews at remote locations.

It has been our experience under part 48, however, that mine operators, including small operators and those working in remote areas, generally have been able to obtain approved instructors when needed. Approved instructors have been readily available through three sources: Operators' staffs, state grantees, and private vendors. Even small mine operators have become

approved instructors themselves, available to train employees as necessary. Some commenters indicated they have staff training resources.

We have approved thousands of instructors. There are various ways described in §§ 48.3(l) and 48.23(l) of becoming an approved instructor. Many instructors are approved based on expertise, and that can include shaft and slope construction. If the demand is there, we anticipate even more individuals will seek certification as instructors.

4. Sections 48.8 and 48.28 Annual Refresher Training

We proposed to amend existing paragraph (d) to require all shaft and slope construction workers employed on the effective date of the final rule to receive annual refresher training no later than 12 months from the effective month of the rule. There were no comments on the proposed provision, and therefore, it remains unchanged in the final rule.

This will establish an annual refresher training cycle for shaft and slope construction workers. To maintain this training cycle, shaft and slope construction operators may complete the annual refresher training during the last calendar month of the miners' annual refresher training cycle.

5. Effective Date

Under the proposed rule, the rule would be effective 180 days after publication except for §§ 48.3(o) and 48.23(o). Those sections, requiring submission of a training plan, would be effective on the date of publication. We did not receive any comments on the proposed effective date, and it remains unchanged in the final rule.

III. Executive Order 12866

Executive Order (E.O.) 12866 as amended by E.O. 13258 requires that regulatory agencies assess both the costs and benefits of intended regulations. We have fulfilled this requirement for the final rule, and have determined that the final rule will not have an annual effect of $100 million or more on the economy. Therefore, it is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866.

The rule will provide shaft and slope construction workers with the same type of safety and health training afforded other miners. Shaft and slope construction workers will now receive training for new miners, training for experienced miners, task training, annual refresher training, and hazard training, as applicable. The affected mining sectors and costs and benefits of the final rule are discussed below. A full discussion of the economic impacts of the final rule is provided in the Regulatory Economic Analysis which is provided on our webpage at *www.msha.gov,* under Rules and Regulations.

Mining Sectors Affected

This final rule extends part 48 training to coal and metal and nonmetal shaft and slope construction workers who work in underground mines or at surface areas of underground mines. Based on the second quarter of 2003 data, the final rule will cover about 690 full-time equivalent shaft and slope construction workers. Of this total, about 570 (or 83%) are employed by coal contractor firms, while the remaining 120 (or 17%) are employed by metal and nonmetal contractor firms. All of these contractor firms are large by our standards, employing 20 to 500 people. The final rule covers more shaft and slope construction workers than the number reported above because the number discussed above only represents the number of full-time equivalent employees. For instance, if a contractor hires 4 new shaft and slope miners, and three quit, the contractor firm would have paid the cost to train all 4 new hires, although only one remains employed. The one remaining miner is reported in the number of shaft and slope construction workers.

Hence, the final rule covers both currently employed shaft and slope construction workers and all the newly hired shaft and slope construction workers.

Benefits

Safety and health professionals from all sectors of the shaft and slope construction industry recognize that training is a critical element of an effective safety and health program. Training informs miners of safety and health hazards inherent in the workplace and enables them to identify and avoid such hazards. Training further teaches miners health and safety principles and safe operating procedures in performing their work tasks. Training becomes more important with the influx of new and less experienced miners and mine operators; longer work hours to meet demands; and increased demand for contractors who may be less familiar with the dangers on mine property.

There were 15 shaft and slope construction worker fatalities and an estimated 1,819 NFDL injuries from 1982 to 2005.[1] This is equivalent to 0.69 fatalities and 86.64 NFDL injuries annually for shaft and slope construction workers. We further analyzed the incidence rates of six shaft and slope construction contractors, five of which represent the majority of the industry. We used the number of the industry's fatalities as the basis for determining the industry-wide accident and injury rates.

In support of our 1999 part 46 final rule, we estimated the effect of metal and nonmetal miner training using data on injury and fatality rates for mines that conducted training versus those that did not. On average, mines that conducted training had fatality rates that were 60 percent lower and days-lost injury rates that were 26 percent lower, relative to mines that did not conduct training. We noted that the mines with training tended to be larger and safer (independent of training) and assumed that only half of the observed lower injury and fatality rates was due to training itself. Therefore, for part 46, we estimated that miner training will reduce fatality rates by 30 percent and injury rates by 13 percent.

Applying these same rates to shaft and slope construction worker training, we estimate that the final rule will prevent approximately 0.2 fatalities and 11 NFDL injuries annually.

Compliance Costs

All cost estimates are presented in 2003 dollars. The total yearly costs of the final rule are estimated to be about $555,000 for all coal contractor firms and $118,000 for all metal and nonmetal contractor firms. In addition, as a result of this rule, coal contractor miners are estimated to incur yearly costs of about $96,000, and metal and nonmetal contractor miners to incur yearly costs of about $20,000 for training prior to employment.

IV. Feasibility

We have concluded that the requirements of the final rule are both technologically and economically feasible. This final rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. In addition, it

[1] MSHA does not have a separate system identifier for shaft and slope contractors in its accident database. However, because MSHA conducts an accident investigation of each mine fatality, we are able to tabulate the total number of shaft and slope fatalities from 1982–2005. To estimate the number of NFDL injuries for all shaft and slope contractors from 1982–2003, we used the ratio of NFDL injuries to fatalities for the six known shaft and slope construction companies and multiplied them by the total number of shaft and slope fatalities from 1982 through August 2003.

does not require the purchase of any machinery or equipment to implement these training plans as prescribed in part 48. Therefore, we have concluded that this final rule is technologically feasible.

The total costs of the final rule are about $555,000 annually for all coal contractor firms and $118,000 annually for all metal and nonmetal contractor firms. We had to combine these coal and metal and nonmetal contractor firms together to estimate the yearly revenues because these contractor firms are not generally limited to one industry, and they could do shaft and slope construction work at both coal and metal and nonmetal mines. These compliance costs are well under 1 percent (about 0.19 percent) of the yearly estimated revenues of $357 million for these contractor firms. We believe this is convincing evidence that the final rule is economically feasible.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act of 1980 as amended, we analyzed the impact of the final part 48 rule on small businesses. Further, we made a determination with respect to whether or not we can certify that the final rule does not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act (RFA), we must include in the rule a factual basis for this certification. If the final rule were to impose a significant economic impact on a substantial number of small entities, then we must develop an initial regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a final rule on small entities, we must use the SBA definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. We have not taken such an action, and hence are required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees (13 CFR 121.201). All of the underground coal and metal and nonmetal contractor firms affected by this rulemaking fall into this category, and so can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

Traditionally, we have also looked at the impacts of our final rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which the mining community refers to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale, in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with the final rule and its impact on them will also tend to be different. It is for this reason that ''small mines,'' as traditionally defined by the mining community, are of special concern to us.

This analysis complies with the legal requirements of the RFA for an analysis of the economic impacts on ''small entities'' while continuing our traditional look at ''small mines.'' We conclude that we can certify that the final part 48 rule does not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking.

Factual Basis for Certification

Our analysis of economic impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of a final rule for small entities in the sector covered by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than 1 percent of the estimated revenues (for the size categories considered), we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed 1 percent of revenues, it tends to indicate that further analysis may be warranted.

Derivation of Costs and Revenues

Both coal and metal and nonmetal contractor firms would incur costs to comply with this final rule. We examined the relationship between costs and revenues for the coal and metal and nonmetal contractor sectors as two independent entities, rather than combining them into one category. However, we had to combine these two entities to perform impact analysis in this section for the following reasons. Most of the 23 coal and metal and nonmetal contractor firms affected by this final rule are privately owned and do not make their financial data available to the public. The only two contractor firms for which we were able to obtain financial data were listed as coal contractor firms.[2] However, these contractor firms are not generally limited to one industry, and they could perform shaft and slope construction work at both coal and metal and nonmetal mines.

We used available financial data for the two publicly-traded, middle-sized contractor firms [3] together with *Industry Norms & Key Business Ratios* [4] and extrapolated the revenues to estimate revenues for the entire shaft and slope contractor industry. The financial data for each of the two contractor firms was a range of assets (*i.e.*, $1 million to $5 million; $25 million to $50 million). To be conservative, we chose to use the lower bound for the reported assets to calculate the average assets for a contractor firm. The next step was to use the assets to sales ratio for the mining industry from *Industry Norms & Key Business Ratios* [5] to obtain an estimate of average revenues for each contractor firm. Then, we multiplied that revenue number by the 23 contractor firms (from Table IV–2).

Results of Screening Analysis

Our analysis of economic impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of a final rule for small entities in the sector covered by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than 1 percent of the estimated revenues (for the size categories considered), we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed 1 percent of revenues, it tends to indicate that further analysis may be warranted.

The combined estimated yearly cost of the final rule for both coal and metal and nonmetal contractor firms is about $673,000 as compared to estimated annual revenues of about $357 million

[2] The source of the financial data for these two contractor firms was the Thomas Registry, located online at *www.thomasregistry.com.* Thomas Register is an online resource for finding companies and products manufactured in North America.

[3] Since there were no costs to either small coal or metal and nonmetal contractor firms that employ between one to 19 contractor employees, we did not perform separate impact analysis for that mine size category. To satisfy the requirements of SBREFA, we only have to consider a subset of the SBA's definition of ''small entities''—contractor firms that employ 20–500 employees.

[4] *Industry Norms & Key Business Ratios,* pp. 8–10.

[5] The assets to sales ratio is calculated by taking the average assets to sales ratio (of 128.9%) for coal, metal and non-metallic mineral operations, excluding fuel.

for the affected firms.[6] Costs as percentage of revenues are well below one percent (0.19 percent for coal and metal and nonmetal contractor firms) and, therefore, we conclude that the rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act of 1995

The part 48 rule has four provisions: §§ 48.3 and 48.23; and §§ 48.9 and 48.29 that impose a paperwork burden requirement. This final rule does not require a new type of training plan. It requires shaft and slope contractor firms to comply with the paperwork burden requirements as specified in §§ 48.3 and 48.23, and §§ 48.9 and 48.29. The reporting of this paperwork burden requirement is approved under OMB control number 1219–0009. Total first year burden hours consist of two components: first year burden hours and annual burden hours in year one. Total first year costs are equal to the total annualized costs in the first year plus total annual costs in year one. Contractor firms working in coal mines would incur about 296 paperwork burden hours in the first year with associated burden hours costs of $4,091; contractor firms working in metal and nonmetal mines would incur about 72 paperwork burden hours in the first year with associated burden hours costs of $1,081. Of the 296 paperwork burden hours in the first year for contractor firms working in coal mines, only 132 hours were first-year only burden hours, with associated costs of $5,229 (which is equivalent to $366 of annualized costs) of the 72 paperwork burden hours in the first year for contractor firms working in metal and nonmetal mines, only 28 hours were first-year only burden hours, with associated costs of $1,101, which is equivalent to $77 of annualized costs (from Table VII–1 in the REA). Contractor firms working in coal mines would incur about 183 annual burden hours starting in year two with associated costs of $4,425; contractor firms working in metal and nonmetal mines would incur about 49 annual burden hours starting in year two with associated costs of $1,164.

[6] One concern about the robustness of the screening analysis is that it is based on (available) financial data for only 2 of the 23 contractor firms. If the assets and revenues for these two contractor firms were non-representative of the other contractors and in particular significantly over-estimated average contractor firm assets and revenues, then it is possible that actual revenues for all the contractor firms would be insufficient to pass the screening analysis. To address this concern, we obtained employment data, from web pages and MSHA testimony, for several of the corporations controlling the contractor firms. For the two contractor firms for which we have financial data, employment was 50–99 employees and 100–249 employees. For two other contractor firms, total employment was 50–150 employees and up to 300 employees. We found that another contractor firm was owned by Germany's largest mining contractor, with over $2 billion in completed projects in the Americas in recent decades. Just for these five firms, extrapolating the employment and project information to estimate revenue, we were able to estimate sufficient revenues to pass the screening analysis.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act

This final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than $100 million annually; nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. National Environmental Policy Act

We have reviewed this final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). This final rule is categorically excluded from NEPA requirements because it involves educational activities which have no possibility of significant environmental impact (29 CFR 11.10(a)(1)(vi)). Accordingly, we have not conducted an environmental assessment nor provided an environmental impact statement.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This final rule has no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule does not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

E. Executive Order 12988: Civil Justice Reform

This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this final rule meets the applicable standards provided in section 3 of Executive Order 12988, Civil Justice Reform.

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

This final rule has no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

G. Executive Order 13132: Federalism

This final rule 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.'' Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

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

This final rule does not have ''tribal implications,'' because it does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use

This final rule is not a ''significant energy action,'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy'' ''(including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

We have thoroughly reviewed this final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. We have determined and certified that this final rule will not have a significant economic impact on a substantial number of small entities. We took appropriate account of comments received relevant to the rule's potential impact on small entities. Accordingly, Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, requires no further action or analysis by us.

VIII. Regulatory Text

List of Subjects in 30 CFR Part 48

Mine safety and health, Reporting and recordkeeping requirements, Training programs and mining.

Dated: December 23, 2005.

David G. Dye,

Acting Assistant Secretary for Mine Safety and Health.

■ For reasons set out in the preamble, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 48—[AMENDED]

■ 1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

■ 2. Section 48.2 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(i) and by adding paragraph (b)(4) as follows:

§ 48.2 Definitions.

* * * * *

(a)(1) *Miner* means, for purposes of §§ 48.3 through 48.10 of this subpart A, any person working in an underground mine and who is engaged in the extraction and production process, or engaged in shaft or slope construction, or who is regularly exposed to mine hazards, or who is a maintenance or service worker employed by the operator or a maintenance or service worker contracted by the operator to work at the mine for frequent or extended periods. This definition shall include the operator if the operator works underground on a continuing, even if irregular basis. Short-term, specialized contract workers, such as drillers and blasters, who are engaged in the extraction and production process or engaged in shaft or slope construction and who have received training under § 48.6 (Experienced miner training) of this subpart A may, in lieu of subsequent training under that section for each new employment, receive training under § 48.11 (Hazard training) of this subpart A. This definition does not include:

(i) Workers under subpart C of this part 48, engaged in the construction of major additions to an existing mine which requires the mine to cease operations;

* * * * *

(b) * * *

* * * * *

(4)(i) A person employed as an underground shaft or slope construction worker on June 28, 2006; or

(ii) A person who has six months of underground shaft or slope experience within 24 months before June 28, 2006.

* * * * *

■ 3. Section 48.3 is amended by revising paragraph (a) introductory text and adding paragraph (o) as follows:

§ 48.3 Training plans; time of submissions; where filed; information required; time for approval; method for disapproval; commencement of training; approval instructors.

(a) Except as provided in paragraph (o) of this section, each operator of an underground mine shall have an MSHA-approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

* * * * *

(o) Each operator engaged in shaft or slope construction shall have an MSHA-approved training plan, as outlined in this section, containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

(1) In the case of an operator engaged in shaft or slope construction on December 30, 2005, the operator shall submit a plan for approval by May 1, 2006, unless extended by MSHA.

(2) In the case of a new shaft or slope construction operator after June 28, 2006, the operator shall have an approved plan prior to commencing shaft or slope construction.

■ 4. Paragraph (d) of § 48.8 is revised to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(d) All persons employed as shaft or slope construction workers on June 28, 2006 must receive annual refresher training within 12 months of June 2006.

* * * * *

Subpart B—[Amended]

■ 5. Section 48.22 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(i) and by adding paragraph (b)(4) as follows:

§ 48.22 Definitions.

* * * * *

(a)(1) *Miner* means, for purposes of §§ 48.23 through 48.30 of this subpart B, any person working in a surface mine or surface areas of an underground mine and who is engaged in the extraction and production process, or engaged in shaft or slope construction, or who is regularly exposed to mine hazards, or who is a maintenance or service worker employed by the operator or a maintenance or service worker contracted by the operator to work at the mine for frequent or extended periods. This definition shall include the operator if the operator works at the mine on a continuing, even if irregular, basis. Short-term, specialized contract workers, such as drillers and blasters, who are engaged in the extraction and production process or engaged in shaft or slope construction and who have received training under § 48.26 (Experienced miner training) of this subpart B, may in lieu of subsequent training under that section for each new employment, receive training under § 48.31 (Hazard training) of this subpart B. This definition does not include:

(i) Construction workers under subpart C of this Part 48;

* * * * *

(b) * * *

* * * * *

(4)(i) A person employed as a surface shaft or slope construction worker on the June 28, 2006; or,

(ii) A person who has six months of surface shaft or slope experience within 24 months before June 28, 2006.

* * * * *

■ 6. Section 48.23 is amended by revising paragraph (a) introductory text and adding paragraph (o) as follows:

§ 48.23 Training plans; time of submission; where filed; information required; time for approval; method for disapproval; commencement of training; approval of instructors.

(a) Except as provided in paragraph (o) of this section, each operator of a surface mine shall have an MSHA-approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training,

and hazard training for miners as follows:

* * * * *

(o) Each operator engaged in shaft or slope construction shall have an MSHA-approved training plan, as outlined in this section, containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners as follows:

(1) In the case of an operator engaged in shaft or slope construction on December 30, 2005, the operator shall submit a plan for approval by May 1, 2006, unless extended by MSHA.

(2) In the case of a new shaft or slope construction operator after June 28, 2006, the operator shall have an approved plan prior to commencing shaft or slope construction.

■ 7. Paragraph (d) of § 48.28 is revised to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(d) All persons employed as shaft or slope construction workers on June 28, 2006 must receive annual refresher training within 12 months of June 2006.

* * * * *

[FR Doc. 05–24624 Filed 12–29–05; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA98

Low- and Medium-Voltage Diesel-Powered Electrical Generators

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule amends an existing safety standard to allow the use of low- and medium-voltage diesel-powered electrical generators as an alternative means of powering electrical equipment in underground coal mines. The final rule eliminates the need for mine operators to file petitions for modification to use these portable generators to power electrical equipment and does not reduce the protections afforded miners by the existing standards, in fact it increases protections.

EFFECTIVE DATE: February 28, 2006.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations and Variances, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209–3939. Ms. Smith can be reached at *smith.rebecca@dol.gov* (Internet e-mail) (202–693–9443) (voice) or (202–693–9441) (facsimile). The final rule also is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION:

I. Background Information

We (MSHA) are amending § 75.901 to permit the use of low- and medium-voltage diesel-powered electrical generators as a means for providing a portable source of power to move equipment in, out, and around the mine and to perform work in areas where permissible equipment is not required. This final rule does not reduce the protections for miners in the current standards, but increases miner safety by updating the electrical requirements with new commercially-available technology so miners may use diesel-powered electrical generators as a source of power. The final rule provides protective systems and testing procedures to limit the amount of voltage and current that miners can be exposed to under ground fault conditions; thus, it reduces the possibility of a fire, shock, or burn hazard when miners use these generators.

Furthermore, by issuing this final rule, we are responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses. In accordance with the requirements of the Mine Act, § 101(a)(9), this final rule does not reduce the protection afforded to miners by the existing standard.

Generally, power centers are the main means of supplying electricity in an underground mine. Power centers are placed underground to provide power to permanent or stationary electrical equipment, such as belt conveyor drives, and to mining equipment on working sections. Power centers in areas where permissible equipment is not required are generally stationary. Mine operators use various means to move electrical equipment and to perform work in areas where permissible equipment is not required. In these situations, they are unable to use power centers to energize the machines for the move because of the excessive length of cable required to reach the power center. If longer trailing cables are installed in order to reach remote power centers, proper electrical protection for these low- and medium-voltage three-phase circuits may be compromised and overheating of, or damage to the cables may occur.

Over a 13-year period (1990–2003), through our petition for modification (PFM) process, mine operators have been using low- and medium-voltage diesel-powered electrical generators as an efficient means for providing a portable source of power to move and operate electrical equipment in areas where permissible equipment is not required. These portable diesel-powered electrical generators are easily taken to areas where power centers or other sources of electrical power are not available to move mobile equipment or supply power to other electric equipment needed to do work in outby areas. Proper electrical protection for these low- and medium-voltage three-phase circuits can safely be provided by portable diesel-powered electrical generators.

Existing mandatory safety standards § 75.701 (Grounding metallic frames, casings, and other enclosures of electric equipment) and § 75.901 (Protection of low- and medium-voltage three-phase circuits used underground), specify the grounding requirements for electrical equipment and low- and medium-voltage three-phase circuits. However, when using these generators, mine operators are unable to comply with the existing electrical protection requirements of § 75.901. Currently, § 75.901 requires a grounding circuit to originate from the grounded side of a grounding resistor located at a power center. In addition, § 75.901 does not address the use of a generator frame for the purpose of grounding.

To address their inability to comply with § 75.901, mine operators file PFMs under section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act). PFMs may be granted when the Secretary determines that an alternative method of achieving the result of a standard exists that will at all times guarantee the same measure of protection afforded to miners under a standard, or when the application of a standard to the mine will result in a diminution of safety to the miners at the mine. The PFM process results in safety requirements and procedures that are applicable only to an individual mine. Once a final written decision pertaining to a PFM has been issued, the governing terms and conditions contained in the decision become the mandatory standard at the individual mine. After

the PFM is issued, we continue to monitor compliance with its terms and conditions.

During the time period January 1990 through October 2003, we granted 63 PFMs that requested the use of diesel-powered electrical generators. These PFMs affected 56 mines.

The first petition granted for a modification of § 75.901 was submitted to us in 1990, requesting the use of a diesel-powered electrical generator. In 1996, we determined that it was necessary for a mine operator to petition both §§ 75.701 and 75.901 to allow the use of a diesel-powered electrical generator in underground coal mines. Petitioning both standards resulted in additional expense and paperwork burden for mine operators. To reduce the expense and paperwork burden for mine operators, we conducted a review of both standards in 2003 and determined that only a PFM of § 75.901 was necessary because conditions for grounding contained in the petition will satisfy the requirement of § 75.701 as an approved method of grounding.

On June 25, 2004, we published a proposed rule (69 FR 35992) to amend the existing electrical standard § 75.901 (Protection of low- and medium-voltage three-phase circuits used underground), which specifies the safety requirements for protecting low- and medium-voltage three-phase circuits. This standard was published in 1970 (35 FR 17890) and has not been changed.

During November 2004, we held four public hearings on the proposed rule in Salt Lake City, Utah; Birmingham, Alabama; Lexington, Kentucky; and Morgantown, West Virginia. The post-hearing comment period closed December 10, 2004. In response to the proposed rule we received three written comments and oral testimony presented at the public hearings.

II. Discussion of Comments and Testimony Received

During the public hearings, we received many comments which were not directly related to specific proposed provisions of the low- and medium-voltage diesel-powered electrical generators standard. Most of the comments were directed at enhancing other health and safety issues of miners, rather than addressing the electrical safety of grounding circuits for diesel-powered electrical generators. These comments are beyond the scope of this rule and they are addressed by other existing standards. We also received two comments concerning the number of PFMs granted and the purpose behind the proposed rule.

Below is a discussion of the eight categories of comments we received and our general response to them.

1. Types of Diesel-Powered Generators

A commenter questioned whether these generators would be classified as heavy-duty diesel-powered equipment. This issue is beyond the scope of this rulemaking because it does not address the electrical safety of grounding circuits for diesel-powered electrical generators. Examples of standards that address the types of diesel generators are § 75.1908(b) (Nonpermissible diesel-powered equipment; categories) and § 72.501 (Emission limits for nonpermissible heavy-duty diesel-powered equipment, generators, and compressors).

2. Diesel Emissions and Particulates

Several commenters raised concerns that the proposed rule did not address any limits for diesel emissions and particulates emitted into the mine atmosphere as a health risk to miners. One commenter stated that the proposed rule should include carbon monoxide and nitrogen oxide monitoring on the inby equipment operator while the diesel generator was used to take equipment in and out of the mine. Another commented that the diesel particulate emitted into the mine atmosphere is detrimental to miner health. These issues are beyond the scope of this rulemaking which addresses the electrical safety of grounding circuits for diesel-powered electrical generators. These issues are addressed by other standards concerning emissions requirements of diesel-powered generators. Mine operators are reminded that they are still required to meet the requirements of § 70.1900, (Exhaust Gas Monitoring); and § 72.501 (Emission limits for nonpermissible heavy-duty diesel-powered equipment, generators and noncompressors).

3. Fire Hazards

One commenter stated that diesel-powered generators are fire hazards and could be placed in areas where smoke could overtake the miners. Another commented that diesel-powered generators are a fire hazard because the proposed rule failed to require a fire suppression system. We disagree with these commenters that the use of diesel-powered electrical generators is a fire hazard. We have found that any previous safety concerns such as explosion, fire, and shock hazards initially associated with the use of diesel-powered electrical generators have been sufficiently addressed by advances in technology. Rather, we recognize that diesel-powered electrical generator equipment and circuit design improvements in combination with sensitive electrical circuit protections actually reduce fire, explosion, and shock hazards. Moreover, during the 13 years these diesel generators have been approved through the use of PFM for use in underground mines, and we have received no reported incidents of mine fires resulting from their use.

In addition, these issues are beyond the scope of this rulemaking—electrical safety of grounding circuits for diesel-powered electrical generators, and they are addressed by other existing safety standards. For example, § 75.380 (Escapeways; bituminous and lignite mines) requires two separate and distinct escapeways for miners to escape during emergency situations in an underground coal mine, to address any smoke hazard. Section 75.1909(j)(3) (Nonpermissible diesel-powered equipment; design and performance requirements) requires an automatic fire suppression system to address fire hazards. This fire suppression system for diesel-powered equipment applies to the diesel-powered equipment at issue here. Finally, all other examination requirements in 30 CFR part 75 for diesel-powered equipment apply.

In a matter related to fire hazards of diesel-powered generators, we received a comment on safe operating temperatures of equipment being powered by the diesel generators. This comment is beyond the scope of this rulemaking because it does not concern electrical safety of grounding circuits for diesel-powered electrical generators and is addressed generally by § 75.1725(c) (Machinery and equipment; operation and maintenance).

4. Moving Equipment

A commenter stated that when equipment is being moved in or out of the intake escapeway and the equipment breaks down, it blocks the intake escapeway, and an emergency vehicle is needed on the outby side to transport people in case of an emergency or an accident. This comment is beyond the scope of this rulemaking because it does not concern electrical safety of grounding circuits for diesel-powered electrical generators and is addressed by other existing standards. For example, § 75.380 (Escapeways; bituminous and lignite mines), requires that escapeways, both primary and alternate, be maintained in a travelable condition.

5. Maintenance of Equipment

A commenter stated that the diesel-powered generator ''will be neglected and cause serious problems just like all the other outby equipment.'' This issue concerns every piece of underground equipment and not just diesel-powered generators. The comment, therefore, is beyond the scope of this rulemaking, because it does not specifically concern the electrical safety of grounding circuits for diesel-powered electrical generators, and is addressed by other existing standards under 30 CFR part 75.

6. Operation of Equipment

One commenter stated that leaving a piece of diesel-powered equipment unattended is unacceptable. We agree with this commenter that it is unacceptable to leave diesel-powered equipment unattended. Section 75.1916(e) requires diesel-powered equipment not be operated unattended. In addition, § 75.1908(c) defines the term ''attended,'' for diesel-powered equipment (*e.g.*, diesel-powered generators). This comment is beyond the scope of this rulemaking because it does not specifically concern the electrical safety of grounding circuits for diesel-powered electrical generators, and is addressed by these existing standards.

7. Petitions for Modification

One commenter stated that a difference exists between the number of PFMs that were granted as shown in the preamble to the proposed rule and the number the commenter received under his Freedom of Information Act (FOIA) request. We understand that a difference exists between these numbers stated in the preamble and the answer to his FOIA request. This difference is not significant for the rulemaking because we determined the number of petitions for this rulemaking by retrieving the files and hand-counted the number of granted PFMs. We stand by the number in the proposed rule and the final rule as the number of granted PFMs that this rulemaking concerns.

8. Purpose of the Rule

One commenter stated that it appears that we are more concerned about cost savings for the operators than safety for miners. We do not agree with this comment. This final rule does not reduce protections for miners concerning the use of electrical equipment, *e.g.*, diesel-powered electrical generators. In fact, this final rule enhances miner safety by its required design systems and testing procedures that limit the amount of voltage and current to which miners can be exposed under ground fault conditions. These enhancements reduce the possibility of fire, shock, or burn hazards.

Furthermore, while this final rule will eliminate the need for underground coal mine operators to file PFMs if they choose to use diesel-powered electrical generators, it does not reduce protections for miners. Some of the protections in this final rule involve the use of sensitive ground fault devices in conjunction with a grounding resistor that limits the ground fault current to 0.5 amps and trips the neutral grounding resistor when a fault current of not more than 90 milliamps is detected by the system. These requirements reduce the potential for shock hazards and prevent the neutral grounding resistor from overheating and becoming a fire hazard.

III. Section-by-Section Discussion of the Final Rule

Section 75.901 Protection of Low- and Medium-Voltage Three-Phase Circuits Used Underground

Existing § 75.901contains the requirements for low- and medium-voltage three-phase alternating-current circuits used underground.

Final paragraph 75.901(b)(1) through (12) is new and is being added to § 75.901 to permit the use of diesel-powered electrical generators as an alternative to power centers for the purpose of moving equipment in, out, and around the mine, and for performing work in areas where permissible equipment is not required. Paragraphs 75.901(b)(1) through (12) are electrical safety standards applicable to low- and medium-voltage diesel-powered electrical generators and circuits.

In the proposed paragraph (b), we inadvertently omitted the word ''and'' from the phrase ''for the purpose of moving equipment in, out, and around the mine,'' in the introductory paragraph for proposed paragraphs (b)(1) through (b)(12) as published on June 25, 2004 (69 FR 35998). The final rule corrects this omission and the final paragraph now reads correctly. We did not receive any comments on the proposed paragraph. Therefore, paragraph (b) of § 75.901 is finalized as corrected.

Final paragraph (b)(1) requires the diesel engine powering the electrical generator to satisfy the requirements of 30 CFR part 7, subpart E. The regulations in part 7 set out the requirements for diesel engines intended for use in underground coal mines. We did not receive any comments on paragraph (b)(1). Therefore, paragraph (b)(1) is unchanged from the proposed rule.

Final paragraph (b)(2) requires a grounding resistor which is rated for the phase-to-phase voltage of the system to be provided to limit the ground-fault current to not more than 0.5 amperes. To meet these requirements, operators must use grounding resistor(s) in one of the three methods provided in (b)(2)(i), (ii) and (iii), and as illustrated in Appendix A to subpart J. The grounding resistor required by (b)(2)(i) must be located between the wye-connected generator neutral and the generator frame; or the grounding resistors required by (b)(2)(ii) must be located between the wye-connected generator, the transformer secondary and the transformer frame, when an isolation transformer is used; or the grounding resistor required by (b)(2)(iii) must be located between the wye-connected generator neutral and the generator frame when an auto-transformer is used.

Requiring a grounding resistor rated for the phase-to-phase voltage of the system will ensure that adequate insulating properties are provided for the grounding resistor. This is especially important when using auto-transformers. When using an auto-transformer, the grounding resistor is required to be located between the neutral of the wye-connected generator and the generator frame, and it must be rated for the highest output voltage of the auto-transformer. A wye connection provides a neutral grounding point in the system for the purpose of inserting a predetermined value resistor that would limit the current and voltage under a phase-to-ground fault condition. A phase-to-ground fault occurring on the secondary side of the auto-transformer would subject the grounding resistor to the output voltage of the autotransformer. This is because auto-transformers have only one winding-per-phase and do not provide the electrical isolation characteristics necessary to re-establish a different or new system voltage. A resistor that is subjected to a voltage higher than its rating can potentially explode, causing serious injury or death to persons nearby, or it can open from overcurrent, leaving the system ungrounded.

Limiting the ground-fault current to not more than 0.5 amperes, and providing the sensitive ground-fault protection set forth in paragraphs (b)(3) and (b)(4) (discussed below), provides increased protection against explosion, fire, and electrical shock. Because the voltage from a diesel-powered electrical generator may be increased or decreased by an isolation transformer, an

additional grounding resistor limiting the ground-fault current to 0.5 amperes would be required. The additional resistor is needed to re-establish the grounding circuit for the new power circuit derived by the isolation characteristics of the transformer.

For the purpose of establishing an acceptable grounding method for (b)(2)(ii) when an isolation transformer is used in conjunction with a generator, grounding resistors must be connected between the generator wye connection and the generator frame, and between the isolation transformer wye connection and the transformer frame.

The location of the grounding resistor is critical to prevent fire and shock hazards. Our experience has shown that the grounding resistor has been misplaced in some instances. Final paragraph (b)(2) addresses this concern.

One commenter stated that § 75.901(b)(2), which limits the ground fault current to 0.5 amperes, was too restrictive and that the requirements for diesel operation should be the same for low- and medium-voltage electrical equipment.

We disagree with the commenter. We acknowledge that under § 75.901, the present standard for low- and medium-voltage electrical equipment typically limits the ground fault current to 15 amps. However, when § 75.901 was published in 1970 (35 FR 17890, Nov. 20, 1970), these sensitive ground fault devices were not available. We have chosen to update our electrical standards by requiring the use of these sensitive ground-fault devices because the technology permits an enhanced level of safety compared with current standards. Also, this technology is commercially available and used widely in the mining industry and is an approved grounding method under § 75.701.

Since the mid-1980s, the mining industry has used grounding resistors in resistance grounded systems to limit the level of ground fault current in a circuit without any reported problems. The use of the sensitive ground fault limitation (0.5 amps) and tripping (90 milliamps) neutral grounding resistor in conjunction with the ground-fault devices specified in the proposed standard reduces the potential for shock hazards and prevents the neutral grounding resistor from overheating and becoming a fire hazard.

Under the granted PFMs, we have required these diesel-powered generators to have a resistor that limits the ground fault current to 0.5 amps and tripping at 90 milliamps. To the best of our knowledge, mine operators are able to acquire this technology. In addition, we have required that all PFMs granted for high voltage continuous miners, high voltage longwalls, and diesel-powered generators have the required sensitive ground fault limitation and tripping.

In addition, the requirements for a sensitive ground fault limitation and tripping in neutral grounding systems were included in the final rule for the installation, use, and maintenance of high-voltage longwall mining systems used in underground mines (67 FR 11002), and it is a requirement in the high-voltage continuous miner proposed rule (69 FR 42835). We have evaluated the comment and determined that the technology is available, is used by the mining industry, provides enhanced safety protection, and does not reduce the protections afforded miners under the current standards. Therefore, we do not believe that the requirement is too restrictive and the final rule retains the proposed language except for the following grammatical changes.

We changed the word ''and'' to ''or'' in subparagraph (b)(2)(i), ''Between the wye-connected generator neutral and the generator frame; (*see* Figure I in Appendix A to subpart J of this part), as published on June 25, 2004 (69 FR 35998) to clarify our intent that three methods exists to comply with the requirements in paragraph (b)(2). With this change, we are also changing subparagraph (b)(2)(ii) to ''Between the wye-connected generator neutral and the generator frame and between the wye-connected transformer secondary and the transformer frame when an isolation transformer(s) is used and the generator is supplying power to other equipment;'' (see Figure II in Appendix A to subpart J of this part). These changes are necessary to clarify our intent that two resistors are required for isolation transformers as stated in the proposed rule and illustrated in the Figure II of the proposed and final rules.

Also, in subparagraphs (b)(2)(i), (ii), and (iii), we added hyphens between the words ''wye'' and ''connected'' to clarify modifiers in the placement of the grounding resistor as published on June 25, 2004 (69 FR 35998).

Paragraph (b)(3) of the final rule requires each three-phase output circuit of the generator to be equipped with a sensitive ground fault relay set to cause the circuit interrupting device that supplies power to the primary windings of each transformer to trip and shut down the diesel engine when a phase-to-frame fault of not more than 90 milliamps occurs. This maximum current of 90 milliamps reduces the amount of voltage to which a miner is exposed under ground fault conditions because the miner is in parallel with the grounding circuit conductors. When a transformer is used to increase or decrease the voltage provided by the diesel-powered generator, the circuit between the generator and the transformer would be required to be provided with grounded-phase protection. When used in conjunction with the grounding resistor required by paragraph (b)(2), the increased protection against electrical shock assists in providing a grounding system that satisfies the requirements of § 75.701.

One commenter stated that the requirement for activation of ground fault protective devices at 90 milliamps fault current is too restrictive. We disagree with the commenter. Our response to this comment is the same as our response above in (b)(2). The requirement is not too restrictive; the final rule retains the proposed language.

Final paragraph (b)(4) requires each three-phase output circuit that supplies power to equipment have an instantaneous sensitive ground-fault relay that will cause its respective circuit interrupting device(s) to trip and shutdown the diesel engine when a phase-to-frame fault occurs. The rule requires the grounded-phase protection to be set at not more than 90 milliamps. This protection would be provided for all three-phase equipment circuits. This applies to equipment receiving power directly from the diesel-powered electrical generator and from transformers used to change the generator voltage. When used in conjunction with the grounding resistor(s) addressed in paragraph (b)(2), the increased protection against electrical shock provides a grounding system that satisfies the requirements of § 75.701.

The final rule also requires a single window-type current transformer to encircle the three-phase conductors for ground-fault protection. The equipment safety grounding conductors would be prohibited from being passed through or connected in series with the ground-fault current transformers. This configuration could defeat the ground-fault protection and result in hazardous voltages on equipment frames which could potentially cause fatal electrical shocks.

We did not receive any comments on this proposed paragraph. Therefore, paragraph (b)(4) is unchanged from the proposed rule.

Final paragraph (b)(5) requires each three-phase circuit interrupting device to have a means to provide short-circuit, overcurrent, grounded-phase, undervoltage, and ground wire monitoring protection. When connected

to a piece of equipment, the instantaneous trip unit for the circuit interrupting device must be adjusted to trip at not more than 75 percent of the minimum available short circuit current at the point where the cable enters the equipment or the maximum allowable instantaneous settings specified in § 75.601–1, whichever is less. To determine the available short circuit current, calculations would be required which take into account all circuit parameters, including the size and length of the equipment cable. The minimum available short circuit current would be at the end of the maximum length cable where it enters the equipment. Small capacity generators may cause the minimum available short circuit current at the end of the maximum length cable to be lower than the maximum allowable settings specified in § 75.601–1. These requirements will ensure that proper protection is provided for all three-phase output circuits, whether at the generator, distribution box, or at a separate power center that receives its primary power from a diesel-powered electrical generator. We did not receive any comments on the proposed paragraph. Therefore, paragraph (b)(5) is unchanged from the proposed rule.

Final paragraph (b)(6) requires that the equipment portable cable length(s) not exceed the length(s) specified in 30 CFR part 18, Appendix I, Table 9, Specifications for Portable Cables Longer than 500 Feet. The purpose of this requirement is to limit the cable length, which ensures that the short circuit capacity of the generator is great enough to cause the circuit interrupting device to open, thereby preventing damage to the cables. We did not receive any comments on the proposed paragraph. Therefore, paragraph (b)(6) is unchanged from the proposed rule.

Final paragraph (b)(7) requires that permanent label(s) listing the maximum circuit interrupting device setting(s) and maximum portable cable length(s) be installed on each instantaneous trip unit or be maintained near each three-phase circuit interrupting device. This final rule requires that the permanent label(s) be maintained legibly. Because the maximum short circuit current is calculated using the minimum length cable allowed; the label ensures that adequate short circuit protection for each circuit is provided. In addition, other existing standards (§ 75.601 Short circuit protection of trailing cables and § 75.904 Identification of circuit breakers) require the circuit breaker, plug, and receptacle to be labeled to identify the equipment receiving power.

We did not receive any comments on the proposed paragraph. Therefore, paragraph (b)(7) is unchanged from the proposed rule.

Final paragraph (b)(8) requires that only one circuit interrupting device at a time be used when equipment is being moved in, out, and around a mine. This does not prevent the use of more than one circuit when equipment is used to perform work in areas where permissible equipment is not required. When multiple pieces of equipment are used, care must be taken to ensure that the circuit interrupting device settings are properly adjusted to protect the generator and the equipment being operated.

We did not receive any comments on the proposed paragraph. However, the term ''device'' was inadvertently omitted from the phrase ''circuit interrupting device'' in proposed paragraph (b)(8) as published on June 25, 2004 (69 FR 35998). The final rule corrects this omission and final paragraph (b)(8) now reads correctly. Therefore, paragraph (b)(8) is finalized as corrected.

Final paragraph (b)(9) refers to existing § 75.902 (Low- and medium-voltage ground check monitor circuits). Section 75.902 requires the grounding system to include an MSHA-accepted ground wire monitor system, or other no less effective device approved by the Secretary or an authorized representative of the Secretary, to assure ground continuity between the frame of the generator and the equipment being moved or used, or have a No. 1/0 or larger external grounding conductor to bond and ground the frames of all equipment to the frame of the generator. The final paragraph also requires bonding the frame of transformers and metallic cable coupler shells back to the frame of the generator. Grounding equipment in this manner limits the amount of voltage and current to which a miner would be exposed under an electrical fault condition and provides a good path for current flow to activate protective devices.

A commenter stated there was nothing in the standards that requires checking for loose ground connections during the shift the generator is used. We disagree. The final rule, like the proposed rule, requires the use of an MSHA-accepted ground wire monitor system that would detect a loose ground and cause the circuit breaker to open the circuit and shut down the generator.

Another commenter stated that an electric shock hazard exists in grounding to the frame if the ground wire to the equipment became open. We disagree. No hazard exists because the proposed standard requires the use of an MSHA-accepted ground wire monitor system that would detect an open grounding conductor, cause the circuit breaker supplying power to that circuit to open, and shut down the generator.

Lastly, two commenters stated that while the system is a closed circuit system, it is not a grounded system since it is not grounded to earth. We recognize that the system is not intentionally connected to earth. However, additional safety features have been incorporated, such as sensitive ground fault systems and ground wire monitoring that provide equivalent protection to assure that the standard would provide at least the same measure of protection as the existing standards.

Based on the above discussion, no changes have been made to paragraph (b)(9). Therefore, paragraph (b)(9) is unchanged from the proposed rule.

Final paragraph (b)(10) requires all trailing cables extending from the generator to equipment to comply with § 75.907 (Design of trailing cables for medium-voltage circuits). Section 75.907 specifies the trailing cable design requirements for medium voltage circuits and also specifies that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2000 volts or more. Both type cables have been used in the coal mining industry for over 30 years and have been proven to provide the required protection when properly maintained.

A commenter recommended revising proposed § 75.901(b)(10) to allow the use of un-shielded trailing cables from the generator to supply approved low voltage permissible pumps because the packing glands the pumps were approved with would not accommodate the shielded cables. The final rule, as well as the proposed rule, does not permit diesel-powered electric generators to be used where permissible equipment is required. To do so could reduce the protections afforded miners under the current standards. Therefore, paragraph (b)(10) is unchanged from the proposed rule.

Final paragraph (b)(11) requires a strain relief device on each end of the trailing cable(s) that extends between the generator and the piece of equipment being powered. Although requirements for strain relief or clamping of cables are covered by other standards, they are specifically required here because the cables are likely to be pulled to the extent of their length during movement of equipment. This final paragraph also applies to the cable(s) between the diesel-powered

generator, transformer, distribution box and equipment. Some mobile equipment may be capable of pulling the distribution box when the limit of the cable has been reached and further pulling would strain connections of the generator cable. This could result in electrical arcs and faults which may result in flash burns, or fire. We did not receive any comments on this proposed paragraph. Therefore, paragraph (b)(11) of § 75.901 is unchanged from the proposed rule.

Final paragraph (b)(12) requires that, prior to moving each piece of equipment or performing work, a functional test of each ground fault and ground wire monitor system be performed by a qualified electrician who meets the requirements of § 75.153 (Electrical work; qualified person). The ground-fault circuit is tested without subjecting the circuit to an actual grounded phase condition. This paragraph requires a record of each test to be maintained by the mine operator and made available to authorized representatives of the Secretary and to the miners in the mine. This paragraph requires that functional tests be performed before the equipment begins its move from the surface to underground, and from underground to the surface, and movement from one area of a mine to another, and before work is performed by equipment in other areas of the mine where permissible equipment is not required. It does not require a functional test after momentary or incidental stoppage during the moving process, or repositioning of equipment while performing work. Manufacturers of ground fault relay devices already provide circuitry and test methods for their devices that allow testing to be conducted without subjecting the power system to an actual ground fault condition. This method of testing enhances safety by preventing miners from being exposed to energized circuits while performing the test. The functional tests required by this paragraph do not relieve the mine operator of responsibility for performing examinations and tests required by other sections of 30 CFR part 75.

Two commenters stated that a functional test as required by § 75.901(b)(12) would be necessary only at the start of each project even if there was a shift or multiple shifts break before starting to use the generator again and would be no different than a momentary stoppage. They further stated that the generator will be checked on a weekly basis and required to be maintained in a safe operating condition. Therefore, they commented that we should change the paragraph to require a functional test at the start of each project.

We disagree with these comments. Testing the protective devices prior to moving equipment, except for momentary stoppages, ensures that the devices are functioning properly. If the movement of the equipment is halted for a period of time (multiple shifts), the project has stopped and the protective devices should be tested again when the project is resumed. These tests take a minimal amount of time to conduct (minutes) and delays are negligible when compared to the shifts or days that the equipment has been idled. This requirement assures that any problems, *e.g.*, loose grounding wire, which may arise during movement or stoppage will be identified and corrected so that miners are not exposed to hazards.

Further, paragraph (b)(2) updates the electrical requirements by providing these protective devices to provide an enhanced level of safety. As part of our longstanding policy to require these sensitive ground-fault devices, we have included requirements to use the manufacturers' installed test equipment each time these devices are activated prior to movement of equipment or performing work. Reducing the number of functional tests would reduce the protections afforded miners under the current standards.

For these reasons, we made no changes to paragraph (b)(12) and the paragraph is unchanged from the proposed rule.

Appendix A to subpart J consists of three figures applicable to § 75.901(b)(2)(i), (ii) and (iii). Figure I, applicable to § 75.901(b)(2)(i), shows the neutral grounding resistor connected between the wye-connected generator neutral and the generator frame; Figure II, applicable to § 75.901(b)(2)(ii), shows the neutral grounding resistors connected between the wye-connected generator and the transformer secondary and the transformer frame when an isolation transformer is used. We did not receive any comments on Figures I and II in the proposed appendix; therefore, Figures I and II in Appendix A to subpart J are unchanged from the proposed rule. Figure III, applicable to § 75.901(b)(iii), shows the neutral grounding resistor connected between the wye-connected generator neutral and the generator frame when an auto-transformer is used. We discovered an error in Figure III, in Appendix A to Subpart J, after the proposed rule was published in the **Federal Register**. However, this final rule corrects the error and Figure III is correct. We did not receive any comments on proposed Figure III and therefore, Figure III in Appendix A to Subpart J is finalized as corrected.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Executive Order (E.O.) 12866 as amended by E.O. 13258 requires that regulatory agencies assess both the costs and benefits of intended regulations. We have fulfilled this requirement for the final rule, and have determined that the final rule will not have an annual effect of $100 million or more on the economy. Therefore, it is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866.

The final rule will eliminate the need for underground coal mine operators who choose to use diesel-powered electrical generators to file PFMs and thereby will generate cost savings.

From January 1990 to October 2003, 63 petitions were filed to modify §§ 75.701 and 75.901 (Grounding requirements and protection of low- and medium-voltage three-phase circuits used underground). On average, approximately five petitions were filed during each of these years.

Mining Sectors Affected

This final rule applies to all underground coal mines. However, based on already filed PFMs under § 75.901 and § 75.701, we estimate that an average of five underground coal mines per year would choose to use diesel-powered electrical generators in their mines.

Benefits

Diesel-powered electrical generators provide an efficient portable source of power to move electrical equipment. These diesel-powered electrical generators are easily taken to areas where power centers or other sources of electrical power are not available to move mobile equipment or to supply power to other electrical equipment needed to do work in outby areas. The likelihood of electrical accidents will be decreased by (1) the protective design features associated with the diesel-powered electrical generator protective devices, such as requiring the grounding resistor to limit ground fault current to 0.5 amperes under a ground fault condition; (2) requiring the sensitive grounded phase protection device to cause the circuit interrupting device protecting the electrical circuits to open and shut down the diesel-powered generator when a fault current of not more than 90 milliamperes is detected by the system; and (3) equipment testing devices and procedures that are

designed to facilitate safe testing of the diesel-powered electrical circuit. Miner safety is increased with the protective systems and testing procedures required by the rule because they limit the amount of voltage and current that miners can be exposed to under a ground fault condition and also because they reduce the possibility of a fire, shock, or burn hazard. Finally, the rule contains all the necessary electrical safety requirements developed in the PFMs to use diesel-powered electrical generators.

Compliance Cost Savings

Annual cost savings from the final rule will accrue to underground coal mine operators who choose to use diesel-powered electrical generators because they will no longer have to file an average of five PFMs per year. We project that all five affected mines will employ between 20 to 500 workers.

The annual cost savings were derived by using the following: a mine supervisor, earning $57.70 per hour, taking 8 hours to prepare a petition; a clerical worker earning $21.82 per hour taking 0.1 hours to copy and mail a petition; photocopying five pages per petition at a cost of $0.15 per page; and postage of $1 to send the petition to MSHA. Based on the above, underground coal mine operators will incur cost savings of $2,328. These savings are derived as follows:

5 petitions × 8.0 hrs. × $57.70 per hr.	=	$2,308
5 petitions × 0.1 hrs. × $21.82 per hr.	=	$11
5 petitions × (($0.15 photocopy cost per page × 5 pages) + $1 postage per petition)	=	$9
	=	$2,328

There are no substantive changes in the final rule that apply to underground coal mines that choose not to use diesel-powered electrical generators. Thus, such mines will not incur costs nor generate cost savings as a result of the final rule.

Feasibility

MSHA has concluded that the requirements of the proposed rule are both technologically and economically feasible.

This final rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. The requirements of this rulemaking are based on the terms and conditions in granted petitions.

This rulemaking provides an annual cost savings of $2,328 to underground coal and metal and nonmetal mine operators whose yearly revenues are in the billions of dollars.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), we have analyzed the impact of the final rule on small businesses. Further, we have made a determination with respect to whether or not we can certify that the final rule will not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. Under the SBREFA amendments to the RFA, we must include in the rule a factual basis for this certification. If the final rule will have a significant economic impact on a substantial number of small entities, we must develop a regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, we must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. We have not taken such an action and hence are required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees. All mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

We have looked at the impacts of our rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which we and the mining community have traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA rules and the impact of MSHA rules on them will also tend to be different. It is for this reason that ''small mines,'' as traditionally defined by MSHA, are of special concern to us.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on ''small entities'' while continuing our traditional definition of ''small mines.'' We conclude that we can certify that the final rule will not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. We have determined that this is the case both for mines affected by this rulemaking with fewer than 20 employees and for mines affected by this rulemaking with 500 or fewer employees.

Factual Basis for Certification

Our analysis of impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than one percent of the estimated revenues or are negative (*i.e.*, cost savings) we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, it tends to indicate that further analysis may be warranted. Since underground coal mine operators employing fewer than 20 workers have not filed for a petition to use low- and medium-voltage diesel-powered electrical generators, we do not expect the final rule to have any impact on them. Therefore, the analysis of the final rule on small entities is based only on SBA's small mine definition (those having 500 or fewer employees). Using SBA's definition of a small mine (those having 500 or fewer employees) the final rule results in cost savings of $2,328. We therefore conclude that the final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act of 1995

The amendments to § 75.901 do not introduce new paperwork requirements on the mine operator; however, the existing information collection requirements are still subject to Office of Management and Budget (OMB) approval under the Paperwork

Reduction Act (PRA), 44 U.S.C. 3502(13)(A). As a result of this rule, all PFMs for § 75.901 will be superseded, and the information collection request for petitions for modification approved by OMB under 1219–0065 will be reduced. We will submit to OMB a new information collection request for this rule and transfer the recordkeeping paperwork burden hours and costs.

Burden Reduction

Due to this rulemaking, mine operators will no longer have to petition for modification of existing § 75.901 in order to use diesel-powered electrical generators. Existing OMB paperwork package 1219–0065 includes annual burden hours and costs related to the time it takes mine operators to prepare and file petitions with us, including petitions for modifications to use diesel-powered generators. As a result of this rulemaking, the burden hours and costs in OMB paperwork package 1219–0065 that relate to the time it takes operators to prepare and file petitions will need to be reduced to reflect the fact that PFMs to use diesel-powered electrical generators will no longer be needed. Therefore, the burden hours and costs in OMB paperwork package 1219–0065 should be reduced by 40.5 hours and $2,328 annually. This reduction was derived in the following manner.

On average, five underground coal mines are estimated to begin to use diesel-powered electrical generators annually. A mine supervisor, earning $57.70 per hour, is estimated to take 8 hours to prepare a petition. On average, a clerical worker, earning $21.82 per hour, is estimated to take 0.1 hours to copy and mail a petition. Each petition is estimated to be five pages in length, photocopy costs are $0.15 per page, and postage is $1 for each petition. The annual burden hour reduction and cost savings related to preparing and filing petitions are:

Burden Hour Reduction:		
5 petitions × 8 hrs. per petition	=	40.0 hours
5 petitions × 0.1 hrs. per petition	=	0.5 hours
	=	40.5 hours
Burden Cost Savings:		
40 hours × $57.70 wage per hr.	=	$2,308
0.5 hrs. × $21.82 wage per hr.	=	$11
5 petitions × ((5 pgs. × $0.15 per page) + ($1 postage)	=	$9
	=	$2,328

Burden Transfer

Also included in existing PFMs of § 75.901 to use diesel-powered electrical generators are operators' recordkeeping requirements related to performing ground fault and ground wire monitor system tests and making a record of these tests. Such tests must be conducted and records made prior to moving each piece of equipment or performing work. The burden hours and costs related to such tests and records are also included in OMB paperwork package 1219–0065. There are 38 burden hours and $1,064 of burden costs in the first year, 42 burden hours and $1,176 of burden costs in the second year, and 46 burden hours and $1,289 of burden costs in the third year that would be related to these tests and records which would need to be removed from OMB paperwork package 1219–0065 and transferred to the paperwork package related to this rule. The burden hours and costs were derived as follows.

There were 16 mines operating in 2003 that have petitions to use diesel-powered electrical generators. We assume that although five mines annually are estimated to begin using diesel-powered generators, there would, on average, be three existing mines using such equipment that would close. Thus, each year there would be a net of two more mines using diesel-powered electrical generators. A mine electrician earning $28.01 per hour, is estimated to take 0.25 hours to perform the ground fault and ground wire monitor system tests. Such tests are estimated to be conducted six times annually. On average, it is estimated to take the mine electrician 0.1 hours to make a record each time tests are conducted.

The first year burden hours and costs related to performing ground fault and ground wire monitor system tests and making a record are:

18 mines × (0.25 hrs. + 0.1 hrs. for tests and record) × 6 times per year = 38 hours

38 hours × $28.01 wage per hour = $1,064

The second year burden hours and costs related to performing ground fault and ground wire monitor system tests and making a record are:

20 mines × (0.25 hrs. + 0.1 hrs. for tests and record) × 6 times per year = 42 hours

42 hours × $28.01 wage per hr. = $1,176

The third year burden hours and costs related to performing ground fault and ground wire monitor system tests and making a record are:

22 mines × (0.25 hrs. + 0.1 hrs. for tests and record) × 6 times per year = 46 hours.

46 hours × $28.01 wage per hr. = $1,289

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act

This final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than $100 million annually; nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This final rule has no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule does not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

This final rule was written to provide a clear legal standard for affected

conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this final rule meets the applicable standards provided in section 3 of Executive Order 12988, Civil Justice Reform.

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

This final rule has no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Executive Order 13132: Federalism

This final rule 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.'' Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

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

This final rule does not have ''tribal implications,'' because it does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

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

We have reviewed this final rule for its impact on the supply, distribution, and use of energy because it applies to the underground coal mining sector. Because this final rule will result in yearly cost savings to the coal mining industry, this final rule will neither reduce the supply of coal nor increase its price.

This final rule is not a ''significantly energy action,'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies). Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.''

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

We have thoroughly reviewed this final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. We have determined and certified that this final rule will not have a significant economic impact on a substantial number of small entities. We solicited public comments concerning the accuracy and completeness of this potential impact when the rule was proposed. We took appropriate account of comments received relevant to the rule's potential impact on small entities. Accordingly, Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, requires no further action or analysis by us.

VIII. Petitions for Modification

On the effective date of this final rule, all existing PFMs for diesel-powered electrical generators granted under § 75.901 and/or § 75.701 will be superseded.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mining.

Dated: December 23, 2005.

David G. Dye,

Acting Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending chapter I, subchapter O, part 75 of title 30 of the Code of Federal Regulations as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

SUBCHAPTER O—[AMENDED]

■ 2. Section 75.901 is amended by adding paragraph (b) to read as follows:

§ 75.901 Protection of low- and medium-voltage three-phase circuits used underground.

* * * * *

(b) Diesel-powered electrical generators used as an alternative to power centers for the purpose of moving equipment in, out, and around the mine, and to perform work in areas where permissible equipment is not required, must comply with the following:

(1) The diesel engine powering the electrical generator must be approved under 30 CFR part 7, subpart E.

(2) A grounding resistor rated for the phase-to-phase voltage of the system must be provided to limit the ground-fault current to not more than 0.5 amperes. The grounding resistor(s) must be located:

(i) Between the wye-connected generator neutral and the generator frame; (see Figure I in Appendix A to subpart J of this part) or

(ii) Between the wye-connected generator neutral and the generator frame and between the wye-connected transformer secondary and the transformer frame when an isolation transformer(s) is used and the generator is supplying power to the other equipment; (see Figure II in Appendix A to subpart J of this part) or

(iii) Between the wye-connected generator neutral and the generator frame when an auto-transformer is used. (see Figure III in Appendix A to subpart J of this part)

(3) Each three-phase output circuit of the generator must be equipped with a sensitive ground fault relay. The protective relay must be set to cause the circuit interrupting device that supplies power to the primary windings of each transformer to trip and shut down the diesel engine when a phase-to-frame fault of not more than 90 milliamperes occurs.

(4) Each three-phase output circuit that supplies power to equipment must be equipped with an instantaneous sensitive ground-fault relay that will cause its respective circuit interrupting device(s) to trip and cause shutdown of the diesel engine when a phase-to-frame fault occurs. The grounded-phase protection must be set at not more than 90 milliamps. Current transformers used for the ground-fault protection must be single window-type and must be installed to encircle all three phase conductors. Equipment safety grounding conductors must not pass through or be connected in series with ground-fault current transformers.

(5) Each three-phase circuit interrupting device must be provided with a means to provide short-circuit, overcurrent, grounded-phase, undervoltage, and ground wire monitoring protection. The instantaneous only trip unit for the circuit interrupting device(s) in use must be adjusted to trip at not more than 75 percent of the minimum available short circuit current at the

point where the portable cable enters the equipment or the maximum allowable instantaneous settings specified in § 75.601–1, whichever is less.

(6) The equipment portable cable length(s) must not exceed the length(s) specified in 30 CFR part 18, appendix I, table 9, Specifications for Cables Longer than 500 Feet.

(7) Permanent label(s) listing the maximum circuit interrupting device setting(s) and maximum portable cable length(s) must be installed on each instantaneous trip unit or be maintained near each three-phase circuit interrupting device. The permanent label(s) must be maintained legibly.

(8) The circuit interrupting device that supplies three-phase power circuit(s) to the equipment being powered must be limited to the use of only one circuit interrupting device at a time when equipment is being moved in, out, and around the mine.

(9) The grounding system must include an MSHA-accepted ground wire monitor system that satisfies the requirements of § 75.902; or have a No. 1/0 or larger external grounding conductor to bond and ground the frames of all equipment to the frame of the generator.

(10) All trailing cables extending from the generator to equipment must comply with § 75.907.

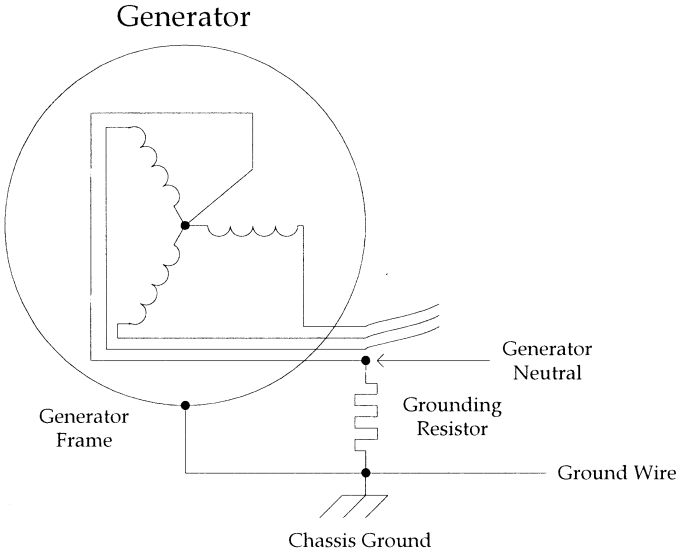
(11) A strain relief device must be provided on each end of the trailing cables that extends between the generator and the piece of equipment being powered.

(12) Prior to moving each piece of equipment or performing work, a functional test of each ground fault and ground wire monitor system must be performed by a qualified electrician who meets the requirements of § 75.153. The ground-fault circuit must be tested without subjecting the circuit to an actual grounded phase condition. A record of each test must be maintained and made available to authorized representatives of the Secretary and to the miners in such mine.

■ 3. Appendix A to subpart J is added to read as follows:

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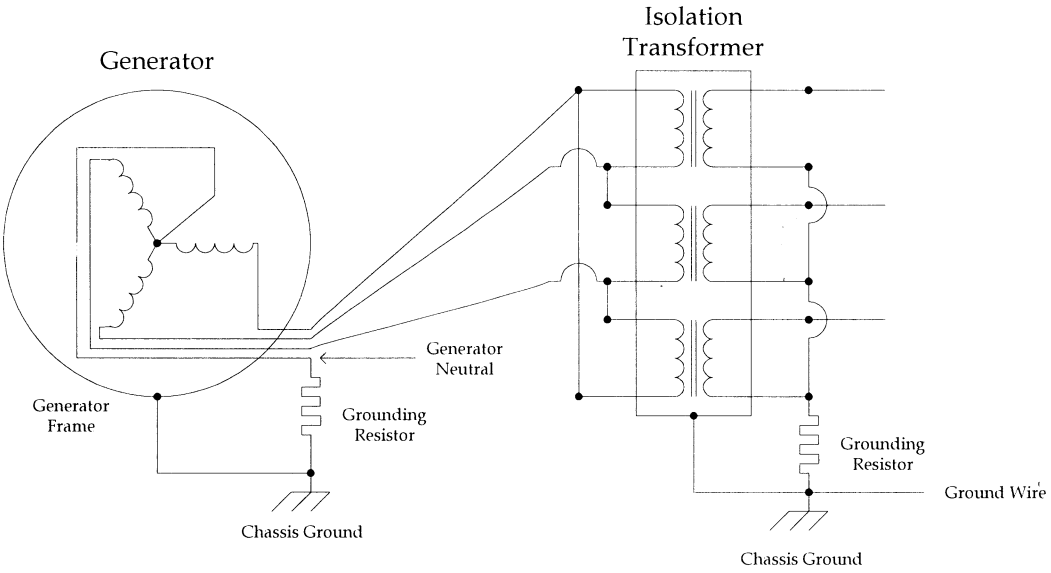
Appendix A to Subpart J



Note that grounding resistor must be mounted on the same frame with the generator.

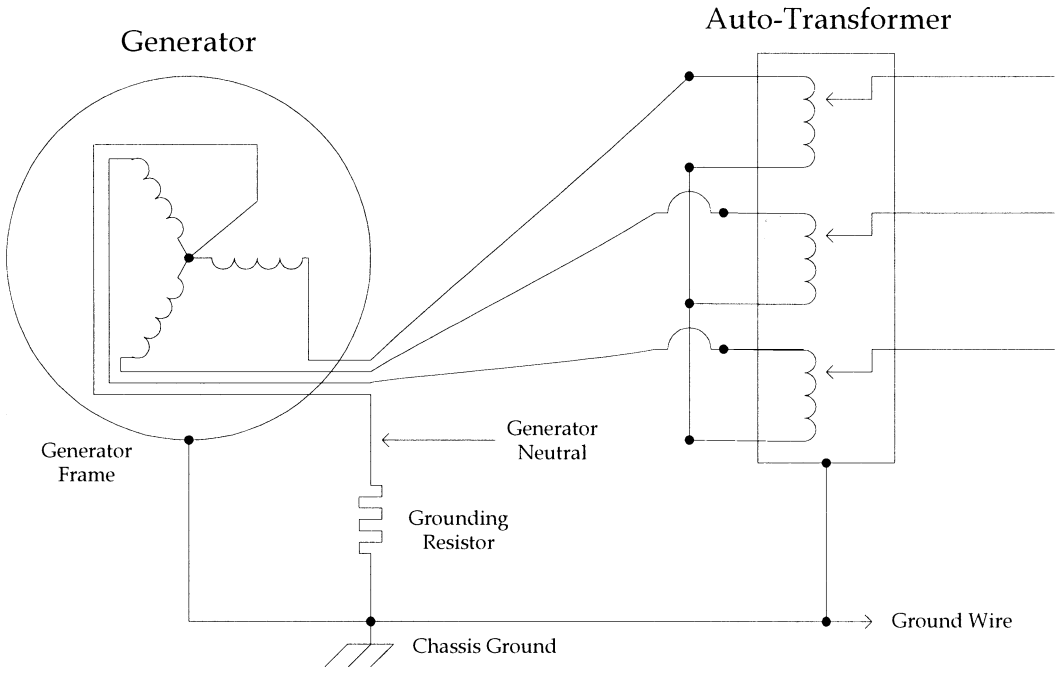
Figure No. I

Appendix A to Subpart J



Note that the grounding resistor must be mounted on the same frame with the generator.

Figure No. II



Note that the grounding resistor must be mounted on the same frame with the generator.

Figure No. III

[FR Doc. 05–24625 Filed 12–29–05; 8:45 am]
BILLING CODE 4510–43–C



Federal Register

Friday,

December 30, 2005

Part VIII

Department of Housing and Urban Development

24 CFR Parts 5, 880, 883, et al.

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 880, 883, 884, 886, 891, and 982

[Docket No. FR–5036–F–01]

RIN 2501–AD19

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements a new law, enacted as part of HUD's Fiscal Year (FY) 2006 appropriations, that restricts individuals enrolled in an institution of higher education and who meet certain other requirements from receiving assistance under section 8 of the U.S. Housing Act of 1937. The new law directed HUD to issue a final rule within 30 days of enactment of the new law. This rule fulfills the statutory requirement.

DATES: *Effective Date:* January 30, 2006.

FOR FURTHER INFORMATION CONTACT: For Section 8 voucher issues, Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4210, telephone (202) 708–0477; for the Office of Housing's project-based Section 8, Gail Williamson, Director, Housing Assistance Policy Division, Room 6180, telephone (202) 708–3000. For all of the individuals, the address is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. None of the aforementioned telephone numbers are toll-free numbers. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Fiscal Year (FY) 2006 appropriations for HUD were recently enacted in Public Law 109–115 (119 Stat. 2936), which was approved on November 30, 2005 (the Act). HUD's appropriations are found in Title III of this law. Section 327 of the administrative provisions of Title III place restrictions on housing assistance that can be provided to students of higher education under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). Specifically, Section 327 of Public Law 109–115 (Section 327) provides as follows:

''Sec. 327. (a) No assistance shall be provided under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) to any individual who—

(1) Is enrolled as a student at an institution of higher education (as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002));

(2) Is under 24 years of age;

(3) Is not a veteran;

(4) Is unmarried;

(5) Does not have a dependent child; and

(6) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible, to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.''

The new law is intended to address recent incidents of college students obtaining federal housing assistance without their educational financial assistance counting as income for purposes of income eligibility for federal housing assistance. The law also describes how educational financial assistance is to be treated in the calculation of income for purposes of determining eligibility.

Section 327 of the Act directs HUD to issue a final rule to carry out this section no later than 30 days from the date of enactment of the law. Since HUD finds the restrictions of the law to be clear, this final rule codifies the restrictions largely as set forth in the statute.

HUD strongly encourages public housing agencies, owners, and management agents administering Section 8 programs to, as soon as it is practicable, recertify existing Section 8 participants that have family members that may meet the requirements of Section 327 of the Act. Prompt recertification, in addition to careful applicant screening, will ensure compliance with the restrictions of the new law.

II. This Final Rule

This final rule amends 24 CFR part 5, subpart F, which addresses income eligibility in assisted housing, among other matters, to incorporate the provisions of the new law. Specifically, this rule makes the following amendments to 24 CFR part 5, subpart F.

Section 5.609(b) of subpart F, which lists forms of compensation that are calculated as income, is amended to include as income, for programs under section 8 of the U.S. Housing Act of 1937 (section 8), the educational financial assistance described in Section 327(b) of the Act, except for persons over the age of 23 with dependent children. Section 327(b) provides for such exemption for persons over the age of 23 with dependent children. HUD has interpreted the term ''financial assistance'' as used in Section 327(b) to not include loan proceeds for the purpose of determining income.

Section 5.609(c)(6) of subpart F lists forms of compensation that are excluded from the calculation of annual income. Prior to the change being made by this final rule, § 5.609(c) provided for the full amount of student financial assistance paid directly to the student or the educational institution to be excluded from annual income. Section 5.609(c)(6) is amended to provide, by cross-reference to § 5.609(b), that the exclusion does not pertain, with regard to Section 8 programs, to the financial assistance described in Section 327(b) of the Act.

A new regulatory section, § 5.612, is added to 24 CFR part 5, subpart F, to codify the criteria set forth in Section 327(a) of the Act by which an individual enrolled in an institution of higher education is ineligible for assistance. Subsection (a)(6) of Section 327 concludes the list of criteria by providing that an individual who is enrolled in an institution of higher education is ineligible for assistance if the individual is not otherwise individually eligible, or has parents who, individually or jointly, are ineligible to receive assistance under Section 8. Since Section 327 is focused on income eligibility of a higher education student, the Department interprets the section's reference to the eligibility of the parents to also refer to income eligibility.

In addition to the amendments made to 24 CFR part 5, subpart F, this final rule also makes conforming amendments to 24 CFR 880.603(b), 24 CFR 883.302, 24 CFR 884.102, 24 CFR 886.102, 24 CFR 886.132, 24 CFR 886.321(b), 24 CFR 891.610(c), 24 CFR 982.201, and 24 CFR 982.552.

III. Justification for Final Rule

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own

regulations on rulemaking in 24 CFR part 10. Part 10, however, provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (see 24 CFR 10.1). In this rulemaking, however, HUD is issuing a final rule to comply with a statutory directive to issue final regulations within 30 days of enactment of Public Law 109–115.

IV. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would impose no additional economic or other burdens on small entities. The entities affected by this rule are agencies administering tenant-based and project-assisted housing and properties that are already required to screen applicants applying for assistance. This rule provides clear directions on how educational financial assistance is to be calculated in an income determination prior to receiving assistance under section 8 of the U.S. Housing Act of 1937.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from publishing any rule that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. 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.

List of Subjects

24 CFR Part 5

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs—housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs-housing and community development; Low and moderate income housing; Mortgage insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

24 CFR Part 880

Grant programs—housing and community development; Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development; Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development; Rent subsidies; Reporting and recordkeeping requirements; Rural areas.

24 CFR Part 886

Grant programs—housing and community development; Lead poisoning; Rent subsidies; Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development; Grant programs—Indians; Indians; Public housing; Rent subsidies; Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 2. In § 5.609, add a new paragraph (b)(9) and revise paragraph (c)(6) to read as follows:

§ 5.609 Annual income.

* * * * *

(b) * * *

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, ''financial assistance'' does not include loan proceeds for the purpose of determining income.

* * * * *

(c) * * *

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

* * * * *

■ 3. Add § 5.612 to read as follows:

§ 5.612 Restrictions on assistance to students enrolled in an institution of higher education.

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

(a) Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(b) Is under 24 years of age;

(c) Is not a veteran of the United States military;

(d) Is unmarried;

(e) Does not have a dependent child; and

(f) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

■ 4. The authority citation for 24 CFR part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 3535(d), 12701, 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 5. In § 880.603(b), the introductory paragraph is revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income eligibility in accordance with 24 CFR part 5, subpart F, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, subpart E, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

■ 6. The authority citation for 24 CFR part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 7. In § 883.302, the definitions of *Family* and *Low-Income Family* are removed and the definition of *Annual Income* is revised to read as follows:

§ 883.302 Definitions.

* * * * *

Annual Income. As defined in part 5 of this title.

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

■ 8. The authority citation for 24 CFR part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 9. In § 884.102, the definition of *Income* is revised to read as follows:

§ 884.102 Definitions.

* * * * *

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in 24 CFR part 5, subpart F.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

■ 10. The authority citation for 24 CFR part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 11. In § 886.102, the definition of *Income* is revised to read as follows:

§ 886.102 Definitions.

* * * * *

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in part 5 of this title.

* * * * *

■ 12. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 880.

■ 13. Section 886.321(b)(1) is revised to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility of assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, 24 CFR part 5, subpart F).

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 14. The authority citation for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q, 42 U.S.C. 1437f, 3535(d), 8013, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 15. Section 886.610(c) is revised to read as follows:

§ 891.610 Selection and admission of tenants.

* * * * *

(c) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers and sign and submit consent forms for obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under 24 CFR part 5, subparts E and F.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 16. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 3535(d), 12701, 13611–13619, and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 17. Section 982.201(a) is revised to read as follows:

§ 982.201 Eligibility and targeting.

(a) *When applicant is eligible: general.* The PHA may only admit an eligible family to the program. To be eligible, the applicant must be a ''family;'' must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E.

* * * * *

■ 18. Section 982.552 is amended to add a new paragraph (b)(5) to read as follows:

§ 982.552 PHA Denial or termination of assistance for family.

* * * * *

(b) * * *

(5) The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 CFR 5.612.

* * * * *

Dated: December 27, 2005.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. 05–24672 Filed 12–27–05; 3:28 pm]

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Federal Register

Friday,
December 30, 2005

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, et al.
Thermal/Acoustic Insulation Installed on Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 and 135

[Docket No.: FAA–2005–23462; Amendment Nos. 91–290, 121–320, 125–50, and 135–103]

RIN 2120–AI64

Thermal/Acoustic Insulation Installed on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the requirements for improved flammability characteristics of thermal/acoustic insulation used as replacements on airplanes manufactured before September 2, 2005. The FAA has recently been provided information that the rule will apply to a much broader range of components in currently operating airplanes than was originally intended. In addition, since publishing a final rule on July 31, 2003, the FAA has learned that some requirements for improved flammability covered materials do not have a significant effect on airplane fire safety. Further, in many cases, compliant replacements are not readily available. This action focuses the requirements on replacement materials that have a greater effect on safety and are readily available, and is necessary to avoid grounding of airplanes.

DATES: This final rule is effective on January 30, 2006. Send your comments by February 28, 2006.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–23462 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the NASSIF Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

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.*

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule because of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2005–23462.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Proprietary or Confidential Business Information

You should not file in the docket any information that you consider to be proprietary or confidential business information. Instead, you should send or deliver that information directly to the person identified under **FOR FURTHER INFORMATION CONTACT**. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under Title 14 Code of Federal Regulations (CFR) 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

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

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

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

Small Business Regulatory Enforcement Fairness Act

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

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. This regulation is within the scope of that authority, because it prescribes new safety standards for the design of transport category airplanes.

Background

Previous Rulemaking

On September 20, 2000, we published Notice No. 00–09, which proposed to upgrade the flammability and fire protection standards for thermal/acoustic insulation installed in transport category airplanes (65 FR 56992). The notice contained a provision that would require thermal/acoustic insulation to comply with the proposed new standards when used as replacements on airplanes already in service, as well as requirements relating to newly manufactured airplanes. Notice No. 00–09 stated:

> Amendments to parts 91, 121, 125, and 135 are proposed to require that insulation materials, when installed as replacements, meet the new flame propagation test requirements of § 25.856. This proposal would provide for the gradual attrition of earlier materials. Since there are existing materials that meet the proposed standards, and since those materials cost and weigh no more than other materials, this should result in no additional cost to operators.

While some commenters questioned whether there was any safety benefit in this provision, no commenters presented any information or data to contradict the assumptions made in establishing the provision. The requirement was adopted in the final rule, published on July 31, 2003, in §§ 91.613(b)(1), 121.312(e)(1), 125.113(c)(1), and 135.170(c)(1) (68 FR 45046). Operators were required to use replacement insulation materials meeting the requirements of § 25.856 after September 2, 2005. Our goal was to purge (operator and supplier) stocks of materials not meeting the new standards and encourage production of only those materials meeting the new standards. Because materials meeting the new standards were already available, the rule attributed no additional costs to this aspect of the requirements.

Basis of This Change

Following publication of the fnal rule, and the associated Advisory Circular (AC) 25.856–1, and shortly before the September 2, 2005, compliance date, industry representatives told us that some assumptions in the regulation were not correct. This information was not provided during the comment period for Notice No. 00–09, or during the 2-year period after the rules were published. While we make every effort to anticipate the complete impact of regulatory proposals, one of the purposes of the ''notice and comment'' process is to get information that we do not have. When affected parties do not comment on a regulation, or when they do comment, but do not raise issues of concern, we must assume the proposal is accurate. In this case, we did not receive inputs during the rulemaking process that would have alerted us to the issues. Nonetheless, now that we are aware of the issues, we recognize that further rulemaking is needed for several reasons.

First, thermal/acoustic insulation is used much more extensively in the fuselage than we originally understood. We did not consider whether compliant replacement parts could be efficiently produced for a significant number of parts installed on airplane models that are no longer in production. Unfortunately, no comments were received to address this provision, and it was not until recently that the extent of the difference between the actual situation and the assumed situation came to light.

Second, some materials needed to comply with the new requirements cost or weigh more than the materials they replace. This is particularly true for materials that are used to insulate certain equipment or provide acoustic attenuation in specialized applications. These materials are not replaced often, but a significant redesign would be required to adapt the associated parts to comply with the new requirements. Usually, these parts and materials are not maintained in large quantities of spares because they are not needed often. However, spares might be procured years in advance of the actual need.

Third, some insulation is integral to another part, and is not separately identified as ''insulation.'' Thus, an operator might inadvertently replace insulation while replacing another component and be out of compliance with the applicable rule. The affected component would not be readily identified in the spares inventory as being affected by the regulations because its primary function and identification were based on something other than thermal/acoustic insulation.

Lastly, certain types of insulation we thought were permanent are occasionally replaced. Airframe manufacturers reported that their records of supplying replacement insulation to operators showed they had never provided replacements for certain parts. However, in actual practice, many operators fabricate their own replacement insulation or procure it from a third party, using data supplied by the airframe manufacturer. All of these issues are complicated for airplane models that are no longer in production and for which replacement parts are not available from the original equipment manufacturer.

The issues discussed above do not apply to insulation ''blankets.'' Insulation blankets are defined as an encapsulated assembly consisting of a core insulating material and a moisture barrier film or cover surrounding the core. They represent the largest usage of thermal/acoustic insulation in the airplane and are, therefore, the most significant from a fire safety standpoint. Insulation blankets are most often used against the airplane fuselage structure but are also used around ducts and under floor panels. The materials used to construct compliant insulation blankets are widely available and can be readily adapted to different applications, even for airplane models no longer in production. The flammability performance of insulation blankets was the primary impetus behind development of the new test standards. The materials in insulation blankets were one of the primary materials intended to be covered by the

''replacement'' provision in the regulation.

In addition, insulation around ducts is significant for its potential fire safety ramifications. Ducts are intended to convey a fluid medium from one point to others and, therefore, provide a potential fire propagation path by their nature. Because air ducts are the most significant and common, we are limiting the replacement provision in this amendment to insulation air ducts only. Therefore, other types of piping, or fluid lines are no longer covered by the replacement provision. These items, which might otherwise be considered ducts, are not included in this amendment because they have very specialized insulation needs, and replacement parts are not readily available. In addition, they tend to be much smaller than air ducts and do not use the large quantity of insulation that was the target of the original proposal.

While some ducts and insulation are integral, meaning that replacement of the insulation includes the replacement of the duct, many ducts are insulated with separate materials. The July 2003 rule will continue to apply to those ducts insulated with separate material. However, insulation that is integral to the duct and cannot be replaced without replacing the duct, will no longer be covered by the regulations for replacement. This includes insulation that is bonded or laminated to the surface of the duct. Such insulation that is the subject of airworthiness directives must still be replaced in accordance with those airworthiness directives.

This amendment changes only the replacement portion of the July 2003 rule. This rule does not affect newly manufactured airplanes. Airframe manufacturers have worked diligently to achieve compliance for newly manufactured airplanes and all the affected parts have been addressed. However, for the reasons noted above, a change is necessary to address unforeseen issues with availability of replacement parts for older airplanes.

Affect on Safety

This change does not have a significant affect on safety. The original intent of the ''replacement'' provision in the regulations was to promote the future production only of materials that comply with 14 CFR 25.856(a) as replacements. We understood that the primary thermal/acoustic insulation subject to replacement was of blanket construction. The regulation was worded generally however, and therefore covered any type of thermal/acoustic insulation when it is replaced. As noted earlier, the most significant insulation from a fire safety standpoint is insulation in blanket form, and insulation on ducts. Replacement of these materials with compliant materials will reduce the potential for fire propagation. However, for other, less extensive materials, a piecemeal replacement with compliant materials has very little, if any safety benefit.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day effective date requirement in section 553.

The FAA finds notice and public comment on this final rule are impracticable. For the APA, ''impracticable'' means if notice and comment procedures were followed, they would defeat the purpose of the rule. This final rule must be adopted promptly to create the certainty and the time needed by operators to schedule and conduct maintenance, and to avoid grounding of airplanes. Coordinating and issuing rulemaking documents will take time under current procedures. The delay associated with notice and comment would negate the relief offered in this final rule, since operators would have to incur great expense to prepare for eventual replacement of thermal/acoustic insulation and associated components for which no current design meeting the new standards exists. Therefore, any delay in issuing this final rule would subject affected operators to confusion and the expense of trying to comply without the necessary design information and, in some cases, availability of appropriate materials. Therefore, it is ''impracticable'' to provide notice and opportunity to comment.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this rule indicates its economic impact is minimal. Since its costs and benefits do not make it a ''significant regulatory action,'' as defined in the Order, we have not prepared a ''regulatory impact analysis.'' Similarly, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a rule is minimal.

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

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

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

This rule narrows the scope of the requirement to use only replacement thermal/acoustic insulation meeting the standards adopted in 14 CFR 25.856(a) for airplanes manufactured before September 2, 2005. The original requirement was sufficiently broad that operators could have been out of compliance, even without realizing it. Those operators would have been subject to fines and they would have experienced maintenance schedule disruptions. By narrowing the scope of the requirement, operators can comply with reasonable effort, and the safety intent of the original rules is preserved. Although we cannot provide a quantitative estimate of the losses resulting from the fines and maintenance schedule disruptions, we believe these would have been significant. Further, there will be a decrease in overall paperwork and costs since fewer part numbers will have to be tracked and updated. Finally operators will be able to focus on the most significant thermal/acoustic insulation materials and ensure their inventories are updated accordingly.

The FAA has, therefore, determined this rulemaking action is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures. In addition, the FAA has determined that this rulemaking action: (1) Will not have a significant economic impact on a substantial number of small entities; (2) will not affect international trade; and (3) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

This rule simply focuses the compliance requirement for replacement materials on those that have a significant safety impact and eliminates a burdensome requirement on those replacement materials that do not. Thus, this rule maintains the benefits of the existing rule and reduces costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

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

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

This rule narrows the scope of the requirement to use only replacement thermal/acoustic insulation meeting the standards adopted in 14 CFR 25.856(a), for airplanes manufactured before September 2, 2005. As the rule narrows the scope of compliance, it provides cost relief for airplane operators.

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

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that these international standards be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking action and has determined that it will provide cost relief for all United States and foreign commercial operators of United States registered airplanes. Thus this rule reduces costs to both domestic and international entities and has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

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

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulation clearly stated?
- Does the regulation contain technical language or jargon that interferes with their clarity?
- Would the regulation be easier to understand if it was divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the regulation?

Please send your comments to the address specified in the **ADDRESSES** section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this final rule qualifies for a categorical exclusion.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Lists of Subjects

14 CFR Part 91

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendments

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter 1 of Title 14 Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

■ 2. Amend § 91.613 by revising paragraph (b)(1) to read as follows:

§ 91.613 Materials for compartment interiors.

* * * * *

(b) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation is installed in the fuselage as replacements after September 2, 2005, the insulation must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003, if it is:

(i) Of a blanket construction or

(ii) Installed around air ducting.

* * * * *

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

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

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

■ 4. Amend § 121.312 by revising paragraph (e)(1) to read as follows:

§ 121.312 Materials for compartment interiors.

* * * * *

(e) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation is installed in the fuselage as replacements after September 2, 2005, the insulation must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003, if it is:

(i) Of a blanket construction or

(ii) Installed around air ducting.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

■ 5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716—44717, 44722.

■ 6. Amend § 125.113 by revising paragraph (c)(1) to read as follows:

§ 125.113 Cabin interiors.

* * * * *

(c) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation is installed in the fuselage as replacements after September 2, 2005, the insulation must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003, if it is:

(i) of a blanket construction or

(ii) Installed around air ducting.

* * * * *

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

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 8. Amend § 135.170 by revising paragraph (c)(1) to read as follows:

§ 135.170 Materials for compartment interiors.

* * * * *

(c) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation is installed in the fuselage as replacements after September 2, 2005, the insulation must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003, if it is:

(i) Of a blanket construction, or

(ii) Installed around air ducting.

* * * * *

Issued in Washington, DC on December 22, 2005.

Marion C. Blakey,

Administrator.

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Vol. 70, No. 250

Friday, December 30, 2005

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

72065–72194 1
72195–72348 2
72349–72576 5
72577–72698 6
72699–72880 7
72881–73122 8
73123–73346 9
73347–73552 12
73553–73904 13
73905–74192 14
74193–74638 15
74639–74994 16
74995–75378 19
75379–75710 20
75711–75928 21
75929–76128 22
76129–76376 23
76377–76670 27
76671–76970 28
76971–77296 29
77297–77752 30

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7967 72575
7968 73903
7969 75711
7970 76647
7971 76651
7972 76969

Executive Orders:
13000 (Revoked by EO 13394) 76665
13368 (Superseded by EO 13393) 76655
13392 75373
13393 76655
13394 (See Memo of 12/22/05—for the Secretary of Transportation) 76665

Administrative Orders:
Memorandums:
Memorandum of June 2, 2005 (Revoked by EO 13394) 76665
Memorandum of December 20, 2005 76374
Memorandum of December 22, 2005 (for the Secretary of Defense) 76667
Memorandum of December 22, 2005 (for the Secretary of Transportation) (See EO 13394) 76669
Presidential Determinations:
No. 2006–5 of December 14, 2005 75929

5 CFR

300 72065
307 72065
315 72065
316 72065
330 72065
335 72065
451 74995
531 ..... 74995, 74996
550 72065
551 72065
575 74995
720 72065

Proposed Rules:
337 ..... 73646, 75745
930 ..... 73646, 75745
1216 74714

7 CFR

51 76671
170 76129
210 72349
220 72349
226 72349
272 72350
274 72350
276 72350
278 72350
279 72350
280 72350
301 73553
305 72881
319 ..... 72068, 72881, 76133
800 73556
906 73123
931 76377
979 72699
984 ..... 72195, 72892
985 72355
993 76971
1030 73126
1902 73347

Proposed Rules:
319 ..... 74215, 75967, 77069
330 74215
340 74215
927 73167
948 75981
979 75984
1005 76718
1007 76718
1124 74166
1131 74166
1207 73945
1209 73945
1220 72257
1496 74717

9 CFR

94 73905

10 CFR

Proposed Rules:
1 74950
2 74950
13 74950
31 75423
34 76724
35 75752
50 75085
110 74950

11 CFR

100 75713
106 75379
111 75717
300 75379

Proposed Rules:
109 73946

12 CFR

41 75931
201 75385

203.....75718
222.....75931
229.....73128, 74998
232.....75931
334.....75931
510.....76674
546.....76674
559.....76674
560.....76674
561.....76674
567.....76674
571.....75931
707.....72895
717.....75931
723.....75719
741.....75723
796.....72702
1805.....73887

Proposed Rules:
Ch. III.....73652
Ch. VII.....75986
701.....75753
741.....75753
951.....76938

13 CFR

106.....75932
121.....72577
123.....72577
300.....74193
301.....74193, 74196
304.....74193, 74196
308.....74195

14 CFR

23 .....72068, 72070, 75000, 77297
25 .....73559, 73561, 75002, 76676
39 .....72358, 72361, 72363, 72366, 72368, 72595, 72902, 73347, 73351, 73355, 73358, 73361, 73364, 73576, 73577, 73579, 73581, 73583, 73919, 73921, 73923, 73925, 73930, 73933, 73935, 74639, 74641, 74645, 74647, 75004, 75386, 75388, 75390, 75725, 75727, 75932, 75933, 76378, 76381, 76385, 76676, 76679, 76681, 76973, 77299, 77301, 77303, 77307, 77310
71 .....72371, 72905, 73129, 73131, 73132, 73134, 74197, 75392, 75393, 75394, 75395, 76140, 76684
73.....76148
91.....77748
97 .....72703, 72705, 73367, 73785, 76392, 76394
121 .....75396, 76974, 77748
125.....76974, 77748
135.....76974, 77748
145.....75396, 76974

Proposed Rules:
13.....72403
25.....76728
39 .....72083, 72085, 72088, 72327, 72406, 72409, 72599, 72601, 72726, 72938, 72939, 72942, 72945, 72947, 73171, 73173, 73391, 73392, 73633, 73665, 73668, 73671, 74235, 74237, 75426, 75428, 75430, 75435, 76431, 77073, 77075, 77342
47.....72403
61.....72403
71 .....72949, 72950, 73959, 75438, 76729, 76730
91.....72403
93.....73674
183.....72403
399.....73960
401.....77262
415.....77262
431.....77262
435.....77262
440.....77262
450.....77262
460.....77262

15 CFR

4.....75729
748.....72073

16 CFR

303.....73369
801.....73369, 77312
803.....73369, 77312

Proposed Rules:
Ch. 1 77077

17 CFR

30.....75934
200.....72566
201.....72566
210.....76626
229.....72372, 76626
231.....73344
239.....72372
240.....76626
241.....73344
249.....76626
271.....73344
420.....73378

Proposed Rules:
4.....74240
15.....74246
16.....74246
17.....74246
18.....74246
19.....74246
21.....74248
200.....77688
232.....77688
240 .....74598, 76116, 77688
249.....74598, 77688
274.....74598

18 CFR

35.....75005
101.....77626
365.....75592
366.....75592

Proposed Rules:
41.....72730
158.....72730
284.....72090, 77079
286.....72730
349.....72730

19 CFR

360.....72373

20 CFR

418.....77664
422.....74649
423.....73135
655.....72556
1002.....75246, 75313

Proposed Rules:
260.....73175
320.....73175
341.....73176
404.....72411, 72416
416.....72411, 72416

21 CFR

Ch. I 72074
101.....76150, 76684
172.....72906
510.....74652, 75398
520 .....73136, 75016, 75017, 75398, 76163, 76396
524.....73137
556.....76163
558.....74652, 75017
610.....72197, 75018
1300.....74653
1308.....74653

Proposed Rules:
20.....76732
310.....73178, 75988
341.....75988
357.....75988
358.....73178
510.....76732
514.....76732
516.....76732
610.....72257

23 CFR

1345.....77320

24 CFR

5.....77292, 77742
203.....72696
570.....76362
880.....77742
883.....77742
884.....77742
886.....77742
891.....77742
941.....72908
982.....77742

Proposed Rules:
3282.....73966

26 CFR

1 .....72376, 72908, 72914, 75028, 75730, 76685
31.....74198
32.....74198
301.....74658
602.....72908, 72914

Proposed Rules:
1 .....72260, 72952, 73393, 73967, 74259, 75090, 75759, 75762, 76433, 76502, 76732
54.....72953, 75998
301 .....72954, 73393, 74259

27 CFR

9 .....72707, 72710, 72713, 72717

Proposed Rules:
4.....72731
5.....72731
7.....72731
9.....72733

28 CFR

0.....76163
1617.....72199
905.....73587
906.....74200

29 CFR

1404.....76396
1926.....76979
1928.....76979
4011.....72074
4022.....72074, 74200
4044 .....72076, 72205, 73330, 74200

Proposed Rules:
1611.....73413

30 CFR

48.....77716
75.....77728
204.....72381
250.....74659
948.....77321

Proposed Rules:
285.....77345
936.....77348

31 CFR

Proposed Rules:
1.....72739

32 CFR

285.....73378
346.....72917

Proposed Rules:
153.....75998
235.....75091
635.....73181

33 CFR

Ch. I 75731
104.....74663
105.....74663
117 .....73380, 73937, 75937, 75939, 76689
151.....74669
153.....74669
160.....74663
165 .....74202, 74676, 75036, 76692

Proposed Rules:
100.....72964
117 .....72419, 72967, 75765, 75767
155.....74259
157.....74259
401.....75769

34 CFR

226.....75908

Proposed Rules:
200.....74624
300.....74624

36 CFR

242.....76400
1011.....73587

Proposed Rules:
7.....77089
242.....76010

37 CFR

253.....72077

38 CFR

3.....72211
4.....75398
9.....75940
20.....72211

Proposed Rules:
3.....76221
4.....76221
14.....76221

39 CFR

111.....72221, 75734
232.....72078
Proposed Rules:
111.....76434

40 CFR

52 .....72597, 72720, 73380, 75399, 76165, 76408, 76694, 77026
60 .....73138, 74679, 74870
61.....73138, 73595
63 .....73138, 73595, 75042, 75047, 75320, 75884, 76918
70.....75320, 75399
71.....75320
80 .....74552, 75914, 77325
81.....76165, 77026
82 .....73604, 77042, 77048
86.....72917, 75403
180 .....74679, 74688, 75734, 76697, 76700
261.....76168
420.....73618
710.....74696, 75059
Proposed Rules:
51 .....72268, 75439, 77101
52 .....72740, 72741, 72744, 73414, 74259, 75093, 75440, 76435, 76733, 76734, 77113
55.....72094
60.....75348
61.....73183, 73675
63 .....72330, 73098, 73183, 73675, 75096, 75924, 77116
70.....75440
80.....74582, 77351
81.....73183
86.....72970
96.....72268, 77101
112.....73518, 73524
122 .....73676, 75771, 76013
123.....76013
180 .....72757, 76224, 77363
272.....75098
412.....75771

41 CFR

60-250.....72148

Proposed Rules:
51-2.....74721
51-3.....74721
51-4.....74721

42 CFR

50.....76174
83.....75949
405.....73623
418.....76175
419.....76176
422.....76196
423.....76198
484.....76199
485.....76176
Proposed Rules:
51a.....76435
1001.....73186

43 CFR

3160.....75954

44 CFR

64.....72078, 74204
65.....73634
Proposed Rules:
67.....73677

45 CFR

Proposed Rules:
1180.....73967

46 CFR

Ch. I.....75731
4.....74669, 75954

47 CFR

1.....76411
15.....75739
22 .....76411, 76414, 76704
64 .....75070, 76208, 76712, 77052
73 .....72723, 73939, 73940, 73941, 73942, 75744
76.....76504
90.....76704
101.....77054
Proposed Rules:
64.....75102
73.....72763, 73972
76.....73973

48 CFR

1.....73415
2.....73415
4.....73415
5.....73415
6.....73415
7.....73415
8.....73415
9.....73415
12.....73415, 76417
13.....73415
15.....73415
16.....73415
17.....73415
19.....73415
22.....73415
25.....73415
28.....73415
30.....73415
32.....73415
36.....73415
42.....73415
48.....73415
49.....73415
50.....73415
52.....73415
53.....73415
Ch. 2.....75411
201.....75411
205.....73148
211.....73150
213.....75411
216.....73151
217.....73151
223.....73150
225.....73152, 73153
226.....73148
232.....75412
252 .....73148, 73150, 73152, 73153
1852.....74206
9901.....73423
9903.....73423
Proposed Rules:
Ch. 2.....73187
208.....73187
215.....75440
225.....73189
230.....75440
252 .....73187, 73189, 75440
253.....73187, 75440

49 CFR

105.....73156
106.....73156
107.....73156
110.....73156
171.....73156
172.....73156
173.....72930, 73156
174.....73156
175.....73156
176.....73156
177.....73156
178.....73156
180.....73156
225.....75414
234.....72382
236.....72382
571.....73383, 75961
572.....77336
1540.....72930
Proposed Rules:
Ch. I.....76228
192.....74262, 74265
195.....74265
229.....73070
238.....73070
571.....74270, 77454

50 CFR

17 .....73820, 74112, 74138, 75071
23.....74700
100.....76400
222.....77054
223.....77054
300.....73943
622 .....73383, 76216, 77057
635 .....72080, 72724, 74712
648 .....72082, 72934, 75074, 75418, 75965, 76422, 76430, 76713, 76714, 76715, 77060
660.....72385, 75075
679 .....73389, 74208, 75080, 75419, 77067
680.....75419
Proposed Rules:
17 .....72776, 72973, 73190, 73699, 74284, 74426, 75546, 76018
100.....76010
216.....73426
223.....72099
600.....76436
635.....73980, 76441
648 .....72100, 74285, 75111, 75114, 76436
660.....72777, 75115
679.....74723, 74739
697.....73717

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 30, 2005

DEFENSE DEPARTMENT

Acquisition regulations:

Technical amendments; published 12-20-05

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Generator interconnection agreements and procedures; standardization; published 11-30-05

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Antitrust Improvements Act:

Premerger notification; reporting and waiting period requirements; published 12-30-05

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

West Virginia; published 12-30-05

PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:

Peace Corps volunteers; enrollment suspension; published 11-30-05

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Medicare subsidies; Medicare Part D Program; published 12-30-05

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Occupant Protection Incentive Grant Program criteria; technical amendments; published 12-30-05

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Advance healthcare planning; written directives and verbal and nonverbal instructions; published 11-30-05

RULES GOING INTO EFFECT DECEMBER 31, 2005

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Chicago New Year's Celebration, Lake Michigan, IL; published 12-15-05

RULES GOING INTO EFFECT JANUARY 1, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:

Arizona-Las Vegas; published 11-25-05

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic commercial shark; published 12-1-05

Caribbean, Gulf, and South Atlantic fisheries—

Grouper; published 12-29-05

Northeastern United States fisheries—

Atlantic surfclam and ocean quahog; published 10-25-05

Summer flounder, scup and black sea bass; published 12-29-05

International fisheries regulations:

Northwest Atlantic Fisheries Organization Regulatory Area; fish quotas and effort allocation; published 12-14-05

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Public utilities including regional transmission organizations; accounting and financial reporting requirements; published 12-30-05

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—

Essential Class I ozone depleting substances; extension of global laboratory and analytical use exemption; published 12-29-05

FEDERAL RESERVE SYSTEM

Home mortgage disclosure (Regulation C):

Depository institutions; asset-size exemption threshold increase; published 12-21-05

Truth in lending (Regulation Z):

Mortgage rates and fees: limitations and disclosure requirements; published 8-9-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Electronic Prescription Drug Program; voluntary Medicare prescription drug benefit; published 11-7-05

Home health prospective payment system; 2006 CY rates update; published 11-9-05

Hospital outpatient prospective payment system and 2006 CY payment rates; published 11-10-05

Physician fee schedule (CY 2006); payment policies and relative value units; published 11-21-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—-

Dietary supplements that contain botanicals; ingredient labeling; published 8-28-03

Food labeling—

Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; published 7-11-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Chicago Sanitary and Ship Canal, IL; published 12-28-05

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

Cost recovery

Effective date delay; published 9-26-05

Plans and information

Effective date delay; published 9-29-05

Royalty management:

Federal oil and gas marginal properties; accounting and auditing relief; State participation decisions; published 12-5-05

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:

Allocation of assets—

Benefits and assets valuation; expected retirement age; published 12-1-05

Benefits payable in terminated plans; published 12-1-05

Interest assumptions for valuing and paying benefits; published 12-15-05

Mortality assumptions, interest rate structure, etc.; published 12-2-05

PERSONNEL MANAGEMENT OFFICE

Pay under General Schedule:

Locality pay areas; adjustments; published 12-19-05

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad accidents/incidents; reports classifications and investigations:

Monetary threshold (CY 2006); revision; published 12-20-05

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Employment tax returns filing time and deposit rule modification; published 1-3-06

Income taxes:

401(k) plans; designated Roth contributions to cash

or deferred arrangements; published 1-3-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Potatoes (Irish) grown in—
Colorado; comments due by 1-6-06; published 12-22-05 [FR E5-07677]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
Critical habitat designations—
Northern right whale; Pacific Ocean; comments due by 1-3-06; published 11-2-05 [FR 05-21861]

Fishery conservation and management:
Northeastern United States fisheries—
Atlantic bluefish; comments due by 1-3-06; published 12-19-05 [FR 05-24208]

West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 1-4-06; published 12-5-05 [FR 05-23640]

DEFENSE DEPARTMENT

Army Department

Personnel:
Decorations, medals, ribbons, and similiar devices; comments due by 1-3-06; published 11-2-05 [FR 05-21519]

DEFENSE DEPARTMENT

Defense Contract Audit Agency

Privacy Act; implementation; comments due by 1-3-06; published 11-2-05 [FR 05-21783]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):
Codes of conduct amendments; Unbundled sales service and blanket marketing certificates; comments due by 1-3-06; published 12-1-05 [FR 05-23405]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
Outer Continental Shelf regulations—
California; consistency update; comments due by 1-3-06; published 12-1-05 [FR 05-23275]

Air quality implementation plans; approval and promulgation; various States:
Colorado; comments due by 1-6-06; published 12-7-05 [FR 05-23712]
Texas; comments due by 1-6-06; published 12-7-05 [FR 05-23718]

Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
Nebraska and Kansas; comments due by 1-3-06; published 11-23-05 [FR 05-23186]
Texas; comments due by 1-3-06; published 11-23-05 [FR 05-23183]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
Outpatient drugs and biologicals; competitive acquisition under Part B; comments due by 1-3-06; published 11-21-05 [FR 05-22175]
Physician fee schedule (CY 2006); payment policies and realtive value units; comments due by 1-3-06; published 11-21-05 [FR 05-22160]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Critical habitat designations—
Fender's blue butterfly and Willamette daisy; comments due by 1-3-06; published 11-2-05 [FR 05-21333]

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:
Marine mammals and threatened and endangered species protection; lessee plans and information submission requirements; comment period extension; comments due by 1-6-06; published 10-25-05 [FR 05-21282]

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:
Classification and program review; comments due by 1-3-06; published 11-3-05 [FR 05-21967]

Organization, functions, and authority delegations:
Central Office et al.; addresses removed from rules; comments due by 1-3-06; published 11-4-05 [FR 05-21966]

SMALL BUSINESS ADMINISTRATION

Loan programs:
Business loans and development company loans; liquidation and litigation procedures; comments due by 1-3-06; published 11-3-05 [FR 05-21681]

Small business size standards:
Inflation adjustment; comments due by 1-5-06; published 12-6-05 [FR 05-23435]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:
Federal old-age, survivors, and disability benefits, and aged, blind, and disabled—
Disability evaluation; age categories definitions; comments due by 1-3-06; published 11-4-05 [FR 05-21975]

TRANSPORTATION DEPARTMENT

Air carrier control:
Fitness review policies; comments due by 1-6-06; published 11-7-05 [FR 05-22056]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Airbus; comments due by 1-3-06; published 12-1-05 [FR 05-23514]
BAE Systems (Operations) Ltd.; comments due by 1-3-06; published 12-8-05 [FR 05-23776]
Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 1-6-06; published 12-7-05 [FR 05-23702]
General Electric Co.; comments due by 1-3-06; published 11-2-05 [FR 05-21805]
Honeywell; comments due by 1-3-06; published 11-2-05 [FR 05-21802]
Pratt & Whitney; comments due by 1-3-06; published 11-2-05 [FR 05-21804]
Short Brothers; comments due by 1-4-06; published 12-5-05 [FR 05-23600]
Turbomeca S.A.; comments due by 1-3-06; published 11-4-05 [FR 05-22007]

Airworthiness standards:
Special conditions—
Cessna Aircraft Co. Model 510 Mustang airplanes; comments due by 1-3-06; published 12-1-05 [FR 05-23523]
New Piper Aircraft, Inc.; PA-34 model airplanes; comments due by 1-3-06; published 12-1-05 [FR 05-23524]

Class B airspace; comments due by 1-6-06; published 11-22-05 [FR 05-23096]

Class E airspace; comments due by 1-3-06; published 11-17-05 [FR 05-22775]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline safety:
Gas gathering line definition; alternative definition for onshore lines; comments due by 1-3-06; published 10-3-05 [FR 05-19455]

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:
Automated Clearing House; Federal agency participation; comments due by 1-6-06; published 11-7-05 [FR 05-22064]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Deferred compensation plans; application of section 409A; comments due by 1-3-06; published 10-4-05 [FR 05-19379]

Income attributable to domestic production activities; public hearing; comments due by 1-3-06; published 11-4-05 [FR 05-21484]

TREASURY DEPARTMENT

Privacy Act; implementation; comments due by 1-6-06; published 12-7-05 [FR E5-07001]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 797/P.L. 109–136

Native American Housing Enhancement Act of 2005 (Dec. 22, 2005; 119 Stat. 2643)

H.R. 3963/P.L. 109–137

To amend the Federal Water Pollution Control Act to extend the authorization of appropriations for Long Island Sound. (Dec. 22, 2005; 119 Stat. 2646)

H.R. 4195/P.L. 109–138

Southern Oregon Bureau of Reclamation Repayment Act of 2005 (Dec. 22, 2005; 119 Stat. 2647)

H.R. 4324/P.L. 109–139

Predisaster Mitigation Program Reauthorization Act of 2005 (Dec. 22, 2005; 119 Stat. 2649)

H.R. 4436/P.L. 109–140

To provide certain authorities for the Department of State, and for other purposes. (Dec. 22, 2005; 119 Stat. 2650)

H.R. 4508/P.L. 109–141

Coast Guard Hurricane Relief Act of 2005 (Dec. 22, 2005; 119 Stat. 2654)

H.J. Res. 38/P.L. 109–142

Recognizing Commodore John Barry as the first flag officer of the United States Navy. (Dec. 22, 2005; 119 Stat. 2657)

S. 335/P.L. 109–143

To reauthorize the Congressional Award Act. (Dec. 22, 2005; 119 Stat. 2659)

S. 467/P.L. 109–144

Terrorism Risk Insurance Extension Act of 2005 (Dec. 22, 2005; 119 Stat. 2660)

S. 1047/P.L. 109–145

Presidential $1 Coin Act of 2005 (Dec. 22, 2005; 119 Stat. 2664)

H.R. 358/P.L. 109–146

Little Rock Central High School Desegregation 50th Anniversary Commemorative Coin Act (Dec. 22, 2005; 119 Stat. 2676)

H.R. 327/P.L. 109–147

To allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation. (Dec. 22, 2005; 119 Stat. 2679)

Last List December 23, 2005

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