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7–8–05 Friday
Vol. 70 No. 130 July 8, 2005

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

WHEN: Tuesday, July 19, 2005—Session Closed
9:00 a.m.-Noon
Tuesday, August 16, 2005
9:00 a.m.-Noon

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

RESERVATIONS: (202) 741-6008

Contents

Federal Register

Vol. 70, No. 130

Friday, July 8, 2005

Separate Parts In This Issue

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.

12 CFR
201 39411

14 CFR
39 (2 documents) 39412, 39559
93 39610

Proposed Rules:
39 (2 documents) 39433, 39435

40 CFR
51 39413
63 39426
799 (2 documents) 39624, 39630

Proposed Rules:
63 (2 documents) 39441, 39457

44 CFR

Proposed Rules:
67 39457

45 CFR
2510 39562
2520 39562
2521 39562
2522 39562
2540 39562
2550 39562

Rules and Regulations

Federal Register
Vol. 70, No. 130
Friday, July 8, 2005

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective July 8, 2005. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 4.00 percent to 4.25 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 4.50 percent to 4.75 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the federal funds rate (from 3.00 percent to 3.25 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> The Committee believes that, even after this action, the stance of monetary policy remains accommodative and, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. Although energy prices have risen further, the expansion remains firm and labor market conditions continue to improve gradually. Pressures on inflation have stayed elevated, but longer-term inflation expectations remain well contained.
>
> The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	4.25	June 30, 2005.
New York	4.25	June 30, 2005.
Philadelphia	4.25	June 30, 2005.
Cleveland	4.25	June 30, 2005.
Richmond	4.25	June 30, 2005.
Atlanta	4.25	June 30, 2005.
Chicago	4.25	June 30, 2005.
St. Louis	4.25	July 1, 2005.
Minneapolis	4.25	June 30, 2005.
Kansas City	4.25	June 30, 2005.
Dallas	4.25	June 30, 2005.
San Francisco	4.25	June 30, 2005.

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	4.75	June 30, 2005.
New York	4.75	June 30, 2005.
Philadelphia	4.75	June 30, 2005.
Cleveland	4.75	June 30, 2005.
Richmond	4.75	June 30, 2005.
Atlanta	4.75	June 30, 2005.
Chicago	4.75	June 30, 2005.
St. Louis	4.75	July 1, 2005.
Minneapolis	4.75	June 30, 2005.
Kansas City	4.75	June 30, 2005.
Dallas	4.75	June 30, 2005.
San Francisco	4.75	June 30, 2005.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 5, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–13443 Filed 7–7–05; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21730; Directorate Identifier 2005–NE–18–AD; Amendment 39–14186; AD 2005–14–09]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) models RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This AD requires removal of certain Engine Electronic Controller (EEC) part numbers from service. This AD results from nine reports of loss of engine parameters displayed in the airplane cockpit, with the simultaneous loss of capability to change thrust of the affected engine. We are issuing this AD to prevent loss of airplane control after an aborted takeoff due to asymmetric thrust.

DATES: Effective July 25, 2005.

We must receive any comments on this AD by September 6, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: 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: 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: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified us that an unsafe condition might exist on Rolls-Royce plc RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. The CAA advises that there have been nine reports of loss of engine parameters displayed in the airplane cockpit, with the simultaneous loss of capability to change thrust of the affected engine. RR's investigation established the cause of these conditions to be a fault in the EEC software. RR has determined that if this condition occurs during takeoff roll and in response, the crew attempts to abort the takeoff, hazardous asymmetric thrust could occur.

Bilateral Airworthiness Agreement

These RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines are manufactured in the UK and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines of the same type design. We are issuing this AD to prevent loss of airplane control after an aborted takeoff due to asymmetric thrust. This AD requires removal of certain EEC part numbers from service.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. FAA–2005–21730; Directorate Identifier 2005–NE–18–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Docket Management System Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition 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 Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management Facility Office receives them.

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 the regulation:

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

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

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

We prepared a 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.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–14–09 Rolls-Royce plc: Amendment 39–14186. Docket No. FAA–2005–21730; Directorate Identifier 2005–NE–18–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 25, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) Model RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines with Engine Electronic Controllers (EECs) listed by P/N in the following Table 1:

TABLE 1.—AFFECTED EEC PART NUMBERS

EEC2000.06.BB.1
EEC2000–06–BE–1
EEC2000–06–BG–1
EEC2000–06–BH–1
EEC2000–06–BL–1
EEC2000–06–BM–1
EEC2000.07.BB.1
EEC2000–07–BE–1
EEC2000–07–BG–1
EEC2000–07–BH–1
EEC2000–07–BL–1
EEC2000–07–BM–1

These engines are installed on, but not limited to, Airbus A330 series airplanes.

Unsafe Condition

(d) This AD results from nine reports of loss of engine parameters displayed in the airplane cockpit, with the simultaneous loss of capability to change thrust of the affected engine. We are issuing this AD to prevent loss of airplane control after an aborted takeoff due to asymmetric thrust.

Compliance

(e) You are responsible for having the actions required by this AD performed before July 31, 2006, unless the actions have already been done.

Removal From Service of EECs

(f) Remove from service the EECs with part numbers listed in Table 1 of this AD.

(g) Information on the EEC software changes can be found in Rolls-Royce Alert Service Bulletin No. RB.211–73–AE324, Revision 2, dated November 1, 2004.

Alternative Methods of Compliance

(h) 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

(i) CAA airworthiness directive G–2004–0025, dated October 27, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on July 1, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–13425 Filed 7–7–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[E–Docket ID No. OAR–2003–0079, FRL–7934–9]

RIN 2060–AJ99

Nonattainment Major New Source Review Implementation Under 8-Hour Ozone National Ambient Air Quality Standard: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of final action on reconsideration.

SUMMARY: On April 30, 2004, the EPA (we)(in this preamble, the terms "we" and "us" refers to the EPA, and "our" refers to EPA's. All other entities are referred to by their respective names (*e.g.*, commenter)) took final action on key elements of the program to implement the 8-hour ozone national ambient air quality standard (NAAQS or 8-hour standard). In that final action, we addressed certain implementation issues related to the 8-hour standard, including the nonattainment major New Source Review (NSR) program mandated by part D of title I of the Clean Air Act ("the Act" or "CAA"). Following this action, EarthJustice filed a petition on behalf of several organizations requesting reconsideration of several aspects of the final rule including implementation of the nonattainment major NSR program, among other issues. By a letter, dated September 23, 2004, we granted

reconsideration of three issues raised by the petition for reconsideration filed by EarthJustice. One of these issues relates to implementation of the major NSR program.

On April 4, 2005, in response to the request for reconsideration relating to aspects of the nonattainment major NSR program for the 8-hour standard, we proposed to retain the final rule as promulgated on April 30, 2004. (70 FR 17018). We requested comment on and provided additional information related to whether we should interpret the Act to require areas to retain major NSR requirements that apply to certain 1-hour ozone nonattainment areas in implementing the 8-hour standard. We also requested comment on whether we properly concluded that a State's request to remove 1-hour major NSR provisions from its State Implementation Plan (SIP) will not interfere with any applicable requirement within the meaning of section 110(l) of the Act.

Today, we are re-affirming our April 30, 2004 final rule. We conclude that the requirements for nonattainment major NSR under the 8-hour standard will be based on a nonattainment area's classification for the 8-hour standard, and that States may remove their 1-hour major NSR programs from their SIPs now that we have revoked the 1-hour standard. We believe that our conclusions are consistent with the Act, including section 110(l), our anti-backsliding policy we established for the 8-hour standard, and the ability of areas to achieve reasonable further progress (RFP) and attainment.

DATES: This final action is effective on August 8, 2005.

ADDRESSES: The EPA docket for this action is Docket ID No. OAR–2003–0079. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B–102, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Hutchinson, Office of Air Quality Planning and Standards, (C339–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5795, fax number (919) 541–5509, e-mail address: *hutchinson.lynn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by the subject rule for today's action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC [a]	NAICS [b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.

[a] Standard Industrial Classification.
[b] North American Industry Classification System. Entities potentially affected by the subject rule for today's action also include State, local, and Tribal governments that are delegated authority to implement these regulations.

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of the our NSR home page located at *http://www.epa.gov/nsr*.

C. How Is This Notice Organized?

The information presented in this notice is organized as follows:

II. Background

On July 18, 1997, we revised and strengthened the ozone NAAQS to change from a standard measured over a 1-hour period (1-hour standard) to a standard measured over an 8-hour period (8-hour standard). Previously, the 1-hour standard was 0.12 parts per million (ppm). We established the new 8-hour standard at 0.08 ppm. (62 FR 38856). Following revision of the standard, we initially promulgated a rule that provided for implementation of the 8-hour standard under the general nonattainment area provisions of subpart 1 of Part D of the Act. (62 FR 38421). Subsequently, the Supreme Court ruled that our implementation approach was unreasonable because we did not provide a role for the generally more stringent ozone-specific provisions of subpart 2 of Part D of the Act in implementing the 8-hour standard. *See Whitman* v. *Amer. Trucking Assoc.*, 531 U.S. 457, 471–476, 121 S. Ct. 903, 911–914 (2001). The Court remanded the rule to us to develop a reasonable approach for implementation. *Id.*

On June 2, 2003, we proposed various options for transitioning from the 1-hour to the 8-hour standard, and for how the 8-hour standard would be implemented under both subpart 1 and subpart 2. (68 FR 32802). On August 6, 2003, we published a notice of availability of draft regulatory text to implement the 8-hour standard. (68 FR 46536). Among other things, this proposed rule included certain provisions for implementing major NSR. Specifically, we proposed that major NSR would generally be implemented in accordance with an area's 8-hour ozone nonattainment classification, but we would provide an exception for areas that were designated nonattainment for the 1-hour standard at the time of designation for the 8-hour standard. If the classification for a 1-hour nonattainment area was higher than its classification under the 8-hour standard, then under the proposed rule, the major NSR requirements in effect for the 1-hour standard would have continued to apply under the 8-hour standard even after we revoked the 1-hour standard. (68 FR 32821).

On April 30, 2004, we promulgated Phase I of the new implementation rule. (69 FR 23951). In response to comments received on the proposal, we revised the implementation approach for major NSR under the 8-hour standard. Specifically, we determined that major NSR would be implemented in accordance with an area's 8-hour ozone nonattainment classification. For those areas that we classify marginal and above, major NSR is implemented under subpart 2. We also indicated that, when we revoke the 1-hour standard, a State is no longer required to retain a nonattainment major NSR program in its SIP based on the requirements that applied by virtue of the area's previous classification under the 1-hour standard. We further indicated that we would approve a request to remove these requirements from a State's SIP because we determined, based on section 110(l) of the Act, that such changes will not interfere with any applicable requirements of the Act, including a State's ability to reach attainment of the 8-hour standard or RFP towards that standard. (69 FR 23985). We noted that States will be required to implement a major NSR program based on the 8-hour classifications. We also emphasized that emission limitations and other requirements in major NSR permits issued under 1-hour major NSR programs will remain in effect even after we revoke the 1-hour standard. (69 FR 23986).

Following publication of the April 30, 2004 final rule, the Administrator received three petitions, pursuant to section 307(d)(7)(B) of the Act, requesting reconsideration of certain aspects of the final rule.[1] On June 29, 2004, Earthjustice submitted one of the three petitions that we received. This petition seeks reconsideration of certain elements of the Phase I Ozone Implementation Rule, including elements of the major NSR provisions. With respect to major NSR, Petitioners contend that the final rules are unlawful because the rules violate section 110(l) and section 172(e) of the Act by not requiring 8-hour ozone nonattainment areas to continue to apply major NSR requirements based on the area's prior 1-hour ozone nonattainment classification. Petitioners also allege that we acted unlawfully by stating that we will approve a State's request to remove 1-hour requirements from the SIP based on our finding that such a revision would not violate section 110(l) for any State. Petitioners assert that these major NSR provisions and our rationale for them were added to the final action after the close of the public comment period. Thus, Petitioners claim, we failed to provide notice and opportunity for public comment concerning these provisions as required under section 307(d)(5) of the Act.

On September 23, 2004, we granted reconsideration of three issues raised in the Earthjustice Petition, including the NSR issues. In an action dated February 3, 2005, we issued a **Federal Register** notice addressing two of those issues: (1) The provision that section 185 fees would no longer apply for a failure to attain the 1-hour standard once we revoke the 1-hour standard; and (2) the timing for determining what is an "applicable requirement." (70 FR 5593). On May 26, 2005, we took final action on these issues. (70 FR 30592).

On April 4, 2005, as part of our reconsideration process, we requested comment on: (1) Whether we must interpret the Act to require States to continue major NSR requirements under the 8-hour standard based on an area's higher classification under the 1-hour standard; and (2) whether revising a State SIP to remove 1-hour major NSR requirements is consistent with section 110(l) of the Act. However, we proposed to retain the nonattainment major NSR requirements as outlined in our April 30, 2004 final rules. (70 FR 17018).

III. Today's Final Action on Reconsideration

A. Final Decision

Today, we re-affirm our April 30, 2004 final rules. Accordingly, States must issue permits to regulate construction and major modifications of major stationary sources consistent with the major NSR requirements that apply based on that area's classification under the 8-hour standard.[2] If a State currently lacks an approved NSR program that applies for the 8-hour standard, the State must submit an NSR program to EPA for our approval. The deadline for submission will be established in Phase II of the ozone implementation rule. Moreover, we find that section 110(l) does not preclude us from approving a State's request to revise its SIP to remove 1-hour nonattainment major NSR requirements.

After reviewing comments we received on the proposal, we continue to interpret the Act as not requiring States to retain major NSR requirements related to the 1-hour standard in implementing nonattainment major NSR

[1] Petitioners are: (1) Earthjustice on behalf of the American Lung Association, Environmental Defense, Natural Resources Defense Council, Sierra Club, Clean Air Task Force, Conservation Law Foundation, and Southern Alliance for Clean Energy; (2) the National Petrochemical and Refiners Association and the National Association of Manufacturers; and (3) the American Petroleum Institute, American Chemistry Council, American Iron and Steel Institute, National Association of Manufacturers and the U.S. Chamber of Commerce.

[2] In implementing a program consistent with the major NSR requirements that apply based on that area's classification under the 8-hour standard, section 116 of the Act allows States to adopt regulations which are not less stringent than the federal minimum requirements.

for the 8-hour standard.[3] Consistent with the mandates of the Supreme Court in *Whitman v. American Trucking*, we crafted a reasonable approach for implementing major NSR requirements under the 8-hour standard. 531 U.S. 457 (2001). Moreover, we interpret the requirements of section 172(e) as not applying in these circumstances, and believe that we have reasonably interpreted this provision in crafting our anti-backsliding policies for the 8-hour standard to exclude major NSR programs as a "control measure." We further believe that basing an area's major NSR requirements on that area's classification under the 8-hour standard will assure that any new emissions from the construction or modification of major stationary sources will be sufficiently mitigated to ensure that such emissions will not interfere with RFP or attainment.

B. Effective Date

In granting reconsideration of the EarthJustice petition, the Administrator elected not to stay or vacate the existing regulations. Accordingly, these requirements remained in effect following the April 30, 2004 promulgation. Several environmental, industry, and governmental petitioners subsequently challenged the April 30, 2004 rule implementing the 8-hour ozone standard. *South Coast Air Quality Management District* v. *U.S. EPA*, No. 04–1200 (and consolidated cases) (DC Cir.). After we granted portions of the EarthJustice petition for reconsideration, the Court, at our request, severed the challenges to the three issues for which EPA granted reconsideration from the main consolidated cases challenging the implementation rule. However, because we committed to an expeditious determination of the three issues under reconsideration, the parties subsequently agreed that it would serve judicial economy and the parties' resources to consolidate the severed case relating to the three issues under reconsideration back into the main case challenging our April 30, 2004 implementation rule. We filed a motion seeking such consolidation. The EPA represented in that motion that it would not take final action on any SIP submittals relating to those provisions earlier than 30 days after it has signed a final action on the aspect of the reconsideration to which the SIP pertains. Accordingly, we will not take final action on a State's request to revise its SIP relative to the 1-hour and 8-hour nonattainment major NSR programs until that time.

C. Significant Comments: Summary and Response

In our April 4, 2005 proposal, we requested comment on five issues related to our reconsideration:

(1) Our determination that the Act does not require States to apply major NSR requirements under the 8-hour standard based on an area's higher classification under the 1-hour standard after we revoke the 1-hour standard;

(2) Our interpretation that the term "control" as used in section 172(e) of the Act does not include major NSR requirements;

(3) Our conclusion that a State's removal of 1-hour major NSR programs from its SIP will not interfere with any applicable requirements of the Act including attainment and RFP;

(4) Our discussion regarding State and local agency emissions projections used for RFP and attainment, including whether the statements we have made regarding those emissions projections are accurate; and

(5) Information on any instance in which a State or local agency relied on major NSR as a control measure to reduce overall base year emissions in a rate of progress (ROP) plan or attainment demonstration.

Below we consolidated the comments that we received to these questions into four main topic areas, and provide our response to those comments.

1. Does the Act Require States To Apply Major NSR Requirements Under the 8-Hour Standard Based on an Area's Higher Classification Under the 1-Hour Standard?

a. Comments

Several commenters supported our position that the Act does not require States to apply major NSR requirements under the 8-hour standard based on an area's higher classification under the 1-hour standard. Nonetheless, several commenters disagreed with our position, that section 172(e) is an expression of Congressional intent that States may not remove control measures in areas which are not attaining a NAAQS when we revised that standard to make it more stringent, because the plain language of section 172(e) applies only when we make a NAAQS less stringent. One commenter stressed that section 172(e) could not logically be applied to a new 8-hour standard. Moreover, many of these commenters agreed with us, that even if section 172(e) applies to the 8-hour implementation rule, we properly concluded that the major NSR program does not impose emissions reduction "controls."

One commenter indicated that we would violate equal protection laws if we established different requirements for different areas based on their attainment status under the revoked 1-hour standard when both are classified the same under the 8-hour standard. Another commenter stated that we appropriately looked into the Congressional history of the Act to determine the underlying purpose of the major NSR program and found that its purpose is to manage growth in a manner consistent with the goals and objectives of the Act. (70 FR 17022), H.R. Rpt. 95–294 at 210 (May 12, 1977).

Conversely, several commenters contend that our decision that States need not retain nonattainment major NSR requirements based on the area's classification under the 1-hour standard is contrary to the two anti-blacksliding provisions in the Act, sections 172(e) and 193. 42 U.S.C. sections 7502(e) and 7515. Several commenters also alleged that in a Senate floor debate on the 1990 amendments, Senator John Chafee described the purpose of section 193 of the Act as "intended to ensure that there is no backsliding on the implementation of adopted and currently feasible measures that EPA has approved as part of a [SIP] in the past, or that EPA has added to State plans on its own initiative or pursuant to a court order or settlement." 136 Cong. Rec. S17, 232, S17, 237 (Oct 26, 1990). The commenters claim that our narrow interpretation of control measure cannot be reconciled with this broad definition. At least one commenter believes that the final rule is contrary to the provisions of the Act, because it allows major sources in 1-hour nonattainment areas that are designated with a lower 8-hour nonattainment classification to be subject to less stringent NSR requirements by raising the tonnage threshold for defining a major source and lowering the required offset ratio.

b. Response

As stated in our April 4, 2005 notice on NSR reconsideration, after reviewing a variety of information including the statutory requirements, Congressional intent as expressed in legislative history, the history of the NSR regulatory program, and our actions on 1-hour ozone ROP plans and attainment demonstrations in general as they relate

[3] On April 18, 2005, we held a hearing to afford the public an opportunity to provide oral testimony on our reconsideration of the nonattainment major NSR provisions in the Phase I Ozone Implementation rule. One person attended the hearing and provided testimony supporting the concerns raised in the Earthjustice petition. Following the public hearing, we received public comment letters from approximately 20 individuals or groups. Section III. B. of this preamble contains a summary of significant comments we received and our responses to those comments.

to nonattainment major NSR programs, we concluded that the Act does not require States to retain a nonattainment program in their SIPs based on the requirements that applied by virtue of the area's previous classification under the 1-hour standard. After considering the comments received on this issue that both support and oppose our position, we continue to believe that our conclusion on this issue is correct.

We agree with commenters that section 172(e) does not apply to the requirements for the 8-hour ozone standard. Nonetheless, because the Act does not specifically address what requirements apply when we strengthen a NAAQS, we stated that we viewed the provisions in section 172(e) as an expression of Congressional intent that States may not remove control measures in areas which are not attaining a NAAQS when EPA revises that standard to make it more stringent. (70 FR 17021). We continue to believe that Congress intended States to retain control measures in SIPs when we strengthen a NAAQS, but we do not believe that Congress intended to restrict States from amending their SIPs to adjust for future management of growth based on current day air quality needs.

We agree with the commenters that even if section 172(e) applies when we strengthen a NAAQS, it would still not preclude a State from adjusting its nonattainment major NSR requirements because major NSR is not a control within the meaning of section 172(e) of the Act. We discuss this interpretation in more detail in section III.C.2. of today's preamble. Moreover, we disagree with commenters who indicate that our final rules violate section 193 of the Act. First, as noted, we do not believe that NSR programs are "control measures" within the meaning of section 193. Secondly, section 193 applies to certain requirements that were in effect before 1990. Today's final rules address how the post-1990 requirements contained in subpart 2 of the Act will apply in 8-hour nonattainment areas.

Before 1990, the nonattainment major NSR requirements were contained in section 173 of the 1977 CAA and they did not include the higher offset ratios and lower major stationary source thresholds found in subpart 2 of the 1990 CAA. In 1990, Congress added additional requirements to section 173 and added subpart 2. Nothing in today's final rule allows any jurisdiction to adopt nonattainment NSR requirements for the 8-hour standard that do not meet the minimum requirements the State used to satisfy section 173 before 1990. Accordingly, section 193 of the Act is not implicated by our final action.

We disagree with the commenter that argues that Congress meant for section 193 of the Act to have broader application. In fact, by its terms, section 193 precludes broader application at least as it relates to subpart 2 requirements. Congress added the subpart 2 requirements at the same time it added section 193. Congress expressed an intent to exclude the new requirements it added in 1990 by limiting section 193 to pre-1990 requirements. The clear intent of this action is that Congress did not mean to use section 193 to limit the ability of States to revise SIPs relative to subpart 2 requirements. Instead, Congress added section 110(l) to the Act to guide such SIP changes. Section 110(l) allows States to make changes to a State SIP with respect to measures not covered by section 193 if the change does not interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. We discuss how our final rule satisfies the requirements of section 110(l) of the Act in section III.C.3. of this preamble.

Viewing these two statutory changes in section 193 and section 110(l) together, Congress expressed an intent to have the pre-1990 requirements establish the foundation for the nonattainment program. However, Congress did not expressly require that States retain subpart 2 requirements, which were added by the 1990 Amendments, in all circumstances. Accordingly, we reject the alternative interpretations expressed by commenters which essentially result in sections 110(l), 172(e), and 193 of the Act as having identical meanings notwithstanding their different wording.

In Chevron v. *NRDC*, 467 U.S. 837 (1984), the Supreme Court considered a challenge to EPA regulations implementing the NSR program which defined the term "source." The Court concluded that neither the statutory language nor legislative history revealed Congress' intent regarding the meaning of the term, and observed that Congress had intended to accommodate competing objectives but did not do so with specificity in its statutory language. Under these circumstances, the Court upheld EPA's regulations as a reasonable accommodation of competing interests because the agency considered the matter in a detailed and reasoned fashion, and the decision involved reconciling conflicting policies. *Id.* at 865. The Court concluded that EPA's regulations reasonably sought to accommodate progress in reducing air pollution with economic growth despite the fact that EPA's regulatory changes would result in fewer sources going through major NSR. *Id.* at 866.

Here, for the 8-hour standard, the Supreme Court directed us to develop a reasonable approach for implementing subpart 2 of Part D of the Act in implementing the 8-hour standard. *Whitman* v. *Amer. Trucking Assoc.*, 531 U.S. 457, 471–76 (2001). For purposes of implementing major NSR, we considered whether States should be required to implement subpart 2 in accordance with an area's previous classification under the 1-hr standard, or with its new classification under the 8-hour standard. After determining that either approach would be consistent with the Act and Congressional intent, we selected, and now re-affirm, the latter approach. We choose to require States to implement major NSR based on an area's classification under the 8-hour standard because we believe that such a classification better reflects the current day air quality needs of the area. Additionally, like the plantwide definition of "source" at issue in *Chevron*, this approach allows States to retain flexibility to better balance environmental objectives with economic growth. "When a challenge to an agency construction of a statutory provision centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail." *Chevron* v. *NRDC*, 467 U.S. at 866.

2. Does the Term "Control" as Used in Section 172(e) Include Major NSR Requirements?

a. Comments

Several commenters agree that major NSR programs are not "controls" that must be preserved in implementing the 8-hour standard. Some reasoned that major NSR does not contribute to emissions reductions below baseline levels. Others contend that "controls" and "growth measures" have distinct meanings and that "controls" are designed to target existing emissions. Others reasoned that if Congress was referring to all requirements within a SIP by using "controls" in section 172(e), then Congress simply could have said that no SIP requirements can be relaxed when a standard is relaxed. For this reason, the commenters agree with EPA that by limiting section 172(e) to control measures Congress intended that only some SIP requirements would continue when a standard is relaxed, and major NSR is not one of these requirements. Importantly, one commenter reasoned that greater offset

ratios may discourage growth altogether and that areas with slightly eased offset ratios may in fact experience more growth which would theoretically result in more offset reductions in the area than would occur if higher offset ratios were imposed.

Other commenters argued that the structure of the Act and its legislative and regulatory history clearly supports the intent that the major NSR permitting program is a "growth measure," rather than a "control measure." One commenter pointed out that our conclusion that NSR is not a "control measure" is clear in the context of section 175A of the Act maintenance plans. (68 FR 25418, 25436).

One commenter participated in the regulatory development process for Illinois' RFP and nonattainment NSR SIP programs. The commenter indicates Illinois did not intend its nonattainment NSR rules (*i.e.*, 35 Ill. Adm. Code part 203) to be a "control measure," but rather a procedural methodology to be used under defined circumstances.

Conversely, several commenters disagreed with our assertion that the nonattainment NSR program is not a "control" requirement or measure. Some commenters reasoned that we drew an artificial distinction between a "growth measure" and a "control measure." The commenters contend that our interpretation is too limited as they believe that NSR operates both to reduce emissions and to control emissions growth.

One commenter asserts that EPA did not provide evidence substantiating our definition of "control" and why it does not include "growth measures." The commenter further stated that we never discuss why it limits the reading of section 172(e) solely to measures that reduce emissions to assure attainment.

Several commenters stated that nonattainment NSR imposes "controls" through the offset requirement and that there is legislative support for this position where the NSR program is described as a "graduated control program" involving increasingly protective requirements for higher classifications. One commenter reasoned there is nothing in section 172(e) or elsewhere in the Act that limits the definition of control to programs whose benefits can be quantified and accounted for by a State in its attainment demonstration. Another commenter stated that NSR is a control measure because offsets are certain and are obtained from the same nonattainment area.

Two commenters reiterate comments raised by Earthjustice's petition that we characterized NSR as a pollution control measure in briefs we submitted to the court. The commenters stated that an emission limitation is a "control measure" or "requirement." The commenters believe an interpretation that NSR is merely a "growth measure" is at odds with legislative history indicating that Congress sought to foster the development of control technology when it enacted Prevention of Significant Determination (PSD) and nonattainment NSR.

One commenter cited several **Federal Register** notices in which we analyzed changes to a State's SIP in light of section 193 requirements and argued that we would have not needed to evaluate whether a SIP change satisfies section 193 unless NSR is a "control requirement."

b. Response

As we previously stated, Section 172(e) does not apply to the requirements for the 8-hour ozone standard. In this action, we are not attempting to assign a comprehensive definition to the term "controls" as used in section 172(e) of the Act. Rather, we interpret the term solely as it relates to our anti-backsliding policy, and whether Congress would have intended States to retain the major NSR program as imposed on 1-hour ozone nonattainment areas as far back as 1990 in implementing the new, more stringent 8-hr ozone NAAQS.

The term "controls" as used in section 172(e) of the Act is ambiguous. As we stated in our April 4, 2005 proposal, Petitioners and others present a possible interpretation of this term. Nonetheless, based on our review of Congressional history and the structure of the Act, we believe Congress' primary purpose in creating the major NSR program was to manage growth in a way that balances economic development with the air quality needs of specific nonattainment areas.

Just as the Supreme Court recognized in *Chevron*, Congress intended to accommodate the competing objectives of progress in reducing air quality with economic growth, but did not always reconcile both of those interests with specificity in its language. We looked at several sections of the Act for direction in interpreting the term "control" in Section 172(e). (70 FR 17018, 17022). In particular, we looked at the Section 172(a)(2) requirement that areas attain "as expeditiously as practicable." Unlike control measures, such as reasonably available control technology (RACT) and transportation control measures (TCM), we do not believe that Congress intended to link the major NSR program to the section 172(a)(2) requirement that areas attain "as expeditiously as practicable." This is evident by Congress's recognition and acceptance that economic growth will result in "some worsening of air quality or delay in actual attainment * * *" *See* H.R. Rpt. 95–294, 214–215 (May 12, 1977). We distinguished Sections 172(c)(1) and (c)(6) which require implementation of all reasonably available control measures as expeditiously as practicable to provide for attainment of the NAAQS from the Section 173(a)(1)(A) requirement that growth due to proposed sources be considered together with other plan provisions required under Section 172 to ensure RFP toward attainment. After carefully reviewing the statute and statement of Congressional intent, we continue to conclude that Congress did not intend to include major NSR requirements within the scope of section 172(e) of the Act.

Moreover, as explained in our April 4, 2005 proposal, unlike control measures for which emissions reductions can be quantified and relied on in a modeling demonstration to show how the measure helps an area reach attainment, the generation of offsets are uncertain and generally cannot be quantified in advance by States. (70 FR 17018, 17023). In 1990, Congress recognized that some States were not accurately predicting the growth within their attainment demonstrations. We believe it is reasonable to assume that Congress included major NSR in its "graduated control program" in subpart 2 to provide an extra buffer for growth in areas with more severe air quality problems.[4]

We do not believe that the structure of the Act and purpose of major NSR support a conclusion that Congress included major NSR in subpart 2 for the purpose of generating emissions reductions. The Act does not support the view that Congress intended the major NSR program to generate

[4] In 1990, Congress recognized that many of the Nation's air pollution problems failed to improve or grew more serious. In assessing the reasons for these failures, Congress identified several problems that lead to this result, including inadequate inventories, deficient models, and uncertainties that exist in the assumptions used in the models. Congress noted that EPA indicated that emissions growth and inaccurate emissions inventories were predominant problems. H.R. Rpt. 101–490(I) at 144 (May 17, 1990). In response, Congress took many steps to improve air quality, including invalidating some of the existing growth allowances and shifting the emphasis from managing growth using growth allowances to using the case-by-case offset approach. In light of the past difficulties States experienced in attainment planning, Congress established a strategy that differentiates among areas with regard to attainment dates based on the severity of the area's ozone problem, including increased offset ratios to compensate for uncertainties in predicting growth.

emissions reductions in the State's base year inventory to move the area forward in attainment, nor have States implemented the program in that manner. The purpose and historical implementation of major NSR distinguish it from the other requirements that we determined in the Phase I implementation rule that nonattainment areas must retain in implementing the 8-hour standard.

To the extent that a nonattainment area is currently designated with a lower classification under the more stringent 8-hour standard, it is because that area now has cleaner air than when it was designated under the 1-hour standard. This improvement demonstrates that the State has more effectively managed efforts to address its air quality problem than in the past. We believe Congress expressed an intent to allow States the flexibility to regulate economic growth in nonattainment areas consistent with efforts to address the severity of the area's air quality problem. Accordingly, we are requiring States to implement a nonattainment major NSR program in accordance with its 8-hour nonattainment classification.

We do not dispute that major NSR requires certain sources to apply control technologies to mitigate pollutant increases and that Congress intended this aspect of the program to advance pollution control technology over time. Moreover, requiring higher offset ratios could theoretically lead to emissions reductions in an area. Nonetheless, as we explained in our proposal, unlike "control measures," States are not relying on the application of these control technologies or offsets to advance the area toward attainment. There is also no guarantee that major NSR will reduce base year emissions, because it is uncertain whether any new emissions sources will be constructed and if offsets will be obtained from the same nonattainment area. *See State of New York* v. *U.S. Environmental Protection Agency*, __ F.3d __, 2005 WL 1489698 (DC Cir.) (C.A.D.C., 2005). (Recognizing that the purpose of emission offsets is to produce no increase in overall regional emissions.)

We do not believe that the statutory framework, legislative history, or common sense require us to characterize a program that only applies when emissions increase in an area as an emissions reduction program irrespective of whether some control technologies or offset requirements are components of the program. Moreover, we agree that it is possible that higher offset ratios may discourage growth and actually result in fewer offset reductions than areas implementing a lower offset ratio, as one commenter stated.[5] [6]

We disagree with the commenter who indicated that offset benefits are certain and that they must always come from the nonattainment area. The commenter provides no evidence to support this statement in light of the provisions of section 173(c) of the Act that allow sources to obtain offsets from other nonattainment areas. Under our final rule for implementing major NSR under the 8-hour standard, we retain the technology forcing aspect of the program by requiring certain sources to install control technologies, and we mandate an offset ratio commensurate with the severity of the area's nonattainment problem.

Even assuming *arguendo* that the term "controls" in section 172(e) of the Act includes the major NSR program, the language in section 172(e) does not resolve which elements of major NSR we must require States to apply in a given nonattainment area. Section 172(e) only requires that when EPA relaxes a NAAQS, it must promulgate regulations requiring the controls that are not less stringent than the controls applicable to areas designated nonattainment before such designation. While section 172(e) provides EPA with the authority to impose requirements for each nonattainment area after it changes a NAAQS standard that are not less stringent than the controls that existed prior to the NAAQS change, section 172(e) does not mandate that EPA's regulations require nonattainment areas to continue to comply with each and every requirement that applied under the previous standard.

Accordingly, it is reasonable to interpret section 172(e) as requiring that, at a minimum, we regulate nonattainment areas under the new standard in a manner consistent with, and not less stringent than, the way similarly-designated nonattainment areas were regulated under the old standard. We satisfy this minimum standard by requiring areas to apply a nonattainment major NSR program consistent with the area's 8-hour classification. That is, all nonattainment areas remain subject to the technology forcing requirements to impose LAER controls but areas need only impose the major source thresholds and offset ratios appropriate for the 8-hour classification.

We concur with the commenter who indicates that it is also clear in the context of section 175A maintenance plans that we should not interpret major NSR as a "control measure." In *Greenbaum* v. *EPA*, the Court held that our interpretation of the term "measure" in section 175A was reasonable, and that we appropriately considered the statutory structure in section 110 in determining that the term as used in section 175A did not include major NSR. Moreover, the Court found persuasive EPA's argument that the very nature of the NSR permit program supports its interpretation that it is not intended to be a contingency pursuant to section 175A(d). The Court noted that contingency measures (like control measures) require immediate emissions reductions on emissions sources. In contrast the Court observed that "[t]he NSR program would have no immediate effect on emissions." 370 F.3d at 537–38. We believe that the structure and purpose of the Act similarly supports our view that major NSR requirements are not "controls" as that term is used in section 172(e).

We disagree with commenters who argue that section 193 of the Act compels us to require nonattainment areas to retain the NSR requirements that apply based on their 1-hour classifications. We previously explained in section III.C.1 of this preamble that section 193 is not applicable since it applies to certain requirements that were in effect before 1990. In evaluating changes to State NSR SIPs, we have stated that section 193 of the Act does not clearly apply to revisions in the NSR programs, but we have nonetheless proceeded to analyze the change under an assumption that it may. (69 FR 31056, 31063). Even proceeding on this assumption, we have relied on a holistic, qualitative assessment of all elements of the SIP to determine if a given action related to NSR complies with section 193 of the Act. We have found that no assessment can be made as to the number of sources affected by the revisions, and in some instances the number of sources regulated by major NSR in a State are so few that reducing the number of sources that might have to comply with the program in the future would result in an insignificant increase in emissions. (64 FR 29563, 29564). Moreover, we have stated that although section 193 uses the phrase "equivalent or greater emissions

[5] Transcript July 19, 1994. (OAR–2001–0004–0650 to –0651). NSR Reform Subcommittee Meeting. U.S. EPA. Statement by Mr. Barr. (To require a traditional offset equivalent in attainment areas would be, in most cases, equivalent to "establishing a zone where there is a construction ban in effect.")

[6] Southern California Air Quality Alliance. (OAR–2001–0004–0418). Letter to Docket. August 25, 2003. (Comment states that high offset levels in California dissuaded a facility from replacing 3 old, high emitting boilers, with new, lower emitting boilers because the cost of offsets was prohibitive. Stated that "this is but one of many actual examples of "stringency" interfering with the emission reductions.")

reductions," in the context of NSR, which does not produce emissions reductions, we evaluate SIP changes to see whether the program as a whole provides equivalent or greater mitigation of new source growth. (69 FR 54006, 54012).

We note that the language used by Congress in section 193 of the Act is different from the language used in section 172(e) of the Act. Rather than use the term "controls" as found in section 172(e), Congress begins section 193 by stating that, "[e]ach regulation, standard, rule, notice, order, and guidance promulgated or issued * * * shall remain in effect * * *" Congress goes on to require that "[no] control requirement in effect * * * may be modified * * * unless the modification insures equivalent or greater emissions reductions of such air pollutant." Arguably, the language in section 193 is more-inclusive than section 172(e). On the other hand, the use of the phrase "in effect" in section 193 arguably encompasses only those permits currently issued and does not affect the ability of a State to change who would be required to obtain a permit in the future.

Given the ambiguity in section 193 of the Act, we have chosen a conservative approach in our review of NSR SIP changes. Our past option to review changes for consistency with section 193 is not conclusive of the scope of section 193. Moreover, it holds no precedential value in evaluating Congress' purpose in using the different term "controls" in section 172(e). The Act, "is too complex a compromise, and has been amended too many times, to indulge the assumption that all of its words must be used consistently in all of its subsections." *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). (Holding that the word "applicable" did not have the same meaning when used in different parts of the Act.)

In sum, we do not believe that by its terms, section 172(e), which imposes requirements on EPA if it relaxes a NAAQS, applies to our final action. However, we view this provision as an expression of Congressional intent that States may not remove control measures in areas which are not attaining a NAAQS when EPA revises a standard to make it more stringent, and we rely on the principles of section 172(e) in crafting our anti-backsliding policy under the 8-hour standard.

Moreover, we believe that Congress created the major NSR program as a measure to mitigate emissions growth rather than a measure to generate emissions reductions from existing sources to reduce the base year emissions inventory in a given nonattainment area. To the extent that subpart 2 requires higher offset ratios and lower major stationary source thresholds, Congress included these requirements not to specifically generate emissions reductions but to provide a buffer to compensate for under projections of growth in state planning. Even if Congress broadly intended major NSR to be included within section 172(e), section 172(e) only requires that we impose the subpart 2 major NSR requirements on similarly-designated nonattainment areas and does not mandate that we retain each and every element of the NSR program under the 1-hour standard in each and every previous nonattainment area, specifically those portions of the NSR program that do not impose control requirements.

3. Will a State's Removal of 1-Hour Major NSR Programs From Its SIP Interfere With Any Applicable Requirements of the Act Including Attainment and RFP?

a. Comments

Several commenters concurred with our finding that applying major NSR requirements based on an area's 8-hour nonattainment classification will not interfere with RFP and attainment or any other applicable requirement of the Act. One commenter noted that section 110(l) of the Act is not an anti-backsliding provision, but merely a requirement to assure that a State continues to meet RFP and attainment despite changes in the SIP. Another commenter indicated that section 110(l) could not be interpreted to require a State to maintain requirements for a standard that we revoked. The commenter argues that such an interpretation of section 110(l) would act to freeze all State rules in the SIP regardless of whether they make economical sense or are necessary for air quality. Many commenters agreed that States do not rely on emissions reductions from major NSR within their attainment demonstrations. Nonetheless, one commenter noted that the fact that States do not include reductions from major NSR in its attainment demonstrations does not mean that major NSR is not an important tool for achieving attainment. Several commenters noted that States use a conservative approach to planning by not including reduction credits from NSR in its attainment demonstration or ROP plan.

Several commenters noted that our own policy indicates that section 110(l) requires a case-by-case, fact-specific review in each circumstance to determine whether the requirements are being met. One commenter indicated that EPA cannot evaluate the effect of major NSR changes on the SIP until it knows the full complement of control measures that States will use to reach attainment of the 8-hour standard. Another commenter argued that higher major source thresholds that will apply in nonattainment areas given a lower nonattainment designation under the 8-hour standard will result in additional unmitigated emissions increases. The commenter asserts that by definition, the change will interfere with the ability of such areas to achieve attainment, and is inconsistent with section 110(l) of the Act. One commenter proposed that a State can only remove NSR requirements if the continued implementation of the program would interfere with progress or timely attainment, or if the State demonstrates that it is no longer feasible to implement the program.

b. Response

Many comments received on our proposal support our understanding of how States account for growth within attainment demonstrations. We address comments related to specific SIP demonstrations in section III.C.4. of today's preamble.

As explained in detail in our April 4, 2004 proposal (70 FR 17023–17025), we conclude that States are not relying on major NSR to generate emissions reductions in the State's attainment modeling. The growth projection methods used in preparing attainment demonstrations and the 8-hour major NSR program requirements will provide overlapping assurances that removing the 1-hour major NSR program from the SIP, will not interfere with RFP or attainment in any 8-hour nonattainment area. Basing an area's major NSR program requirements on its classification under the 8-hour standard assures that emissions increases from major stationary sources are mitigated and provide an ample margin of safety against poor State planning in areas with more severe air quality problems. Accordingly, we find that removing major NSR program requirements from the SIP based on an area's previous classification under the 1-hour standard will not violate section 110(l) of the Act.

We disagree with commenters that our own policy requires a case-by-case, fact-specific review in each circumstance to determine whether the requirements of section 110(l) of the Act are met. Although we have generally conducted case-by-case reviews of SIP changes, we have not always required a detailed analysis for every element within the requested change. For

example, when we approved revisions to the Illinois SIP, commenters objected to Illinois' removal of lowest achievable emission rate (LAER) and offset requirements, and NO_X (RACT) requirements as a relaxation of the SIP. Commenters based their objections on the fact that neither Illinois or the EPA conducted a modeling demonstration showing that these requirements were not needed for attainment. We concluded that modeling was not needed to show that these measures were not needed for attainment because Illinois did not rely on NO_X (reasonably available control technology) RACT to attain the ozone standard, and all sources already implementing major NSR requirements were required to retain these controls. (68 FR 25458–9). Where the record supports generalized determinations on compliance with section 110(l), we conclude that it is appropriate for us to make them.

Moreover, our actions today are consistent with the guidance we issued for approving State SIP changes to remove the dual source definition from State SIPs. In 1981, we revised the major NSR regulations to allow a State to adopt a plantwide definition of stationary source in its nonattainment NSR program. (46 FR 50766). Previously, our regulations required a dual definition of stationary source (including both the entire plant and individual emissions units). We predicted that use of a plantwide definition would bring fewer plant modifications into the nonattainment permitting process, but emphasized that this change would not interfere with RFP and timely attainment because States remained under an independent obligation to demonstrate attainment and maintenance of the NAAQS. (46 FR 50767).

We determined that our action was consistent with Congress' intent that States are to play the primary role in pollution control and Congress' desire that States retain the maximum possible flexibility to balance environmental and economic concerns in designing plans to clean up nonattainment areas. Although section 110(l) was added to the Act in 1990, prior to that date EPA required States, pursuant to section 110(a)(3)(A), to demonstrate that revisions to an implementation plan would not interfere with the ability of an area to attain the NAAQS. See *Navistar Int'l Transp. Corp.* v. *EPA*, 941 F.2d 1339, 1342 (6th Cir. 1991). When we revised our regulations to allow States to adopt the plantwide definition of stationary source, we determined that States that adopt the less inclusive stationary source definition, would have to demonstrate that their plans continue to demonstrate RFP and attainment only if the State relied on emissions reductions that it projected would result from the dual source definition in its attainment planning. (46 FR 50767; Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation to Director, Air Management Division Regions I, III, V and IX, *et al.*, "Plantwide Definition of Major Stationary Sources of Air Pollution," February 27, 1987).

Today, we have determined that with the exception of one jurisdiction,[7] discussed below, no State or local entity has accounted in the past for any emissions reductions relating to the higher offset ratios and lower major source thresholds under the NSR program within their attainment demonstrations. Accordingly, consistent with our policy for demonstrating RFP and attainment established in 1981, no State need submit an individual demonstration to satisfy the requirements of section 110(l) related to RFP and attainment.

We also disagree that EPA cannot know whether removing the 1-hour major NSR program from SIPs will be a relaxation until we know the full complement of control measures that each State will use to reach attainment of the 8-hour standard. We believe that a major NSR program based on the 8-hour classifications will provide a sufficient margin of safety to address major source growth in nonattainment areas, because it will ensure that any growth in major stationary source emissions will be offset in at least a one to one ratio. Moreover, States have other mechanisms to control growth of sources not subject to major NSR through minor NSR programs. Further, under our interpretation of section 110(l), areas need not wait for development of full attainment demonstrations to make SIP changes, provided they can demonstrate no increase in emissions or impediment to achieving NAAQS. Since major NSR at the levels required by the 8-hour classifications will still provide at least 1 for 1 offsets, such major NSR programs will not increase emissions or result in an impediment to achieving NAAQS, and thus will satisfy section 110(l) until States submit a full attainment demonstration.

Notwithstanding the ability of the 8-hour nonattainment major NSR program to ensure that new emissions do not interfere with RFP or attainment, States have every incentive to include adequate control measures in a SIP to move an area as expeditiously as practicable to attainment. If a State predicts that growth will interfere with the ability of existing control measures to bring the area into attainment, it would need to impose additional measures to mitigate growth. If the State fails to plan adequately, "and as a result slips out of compliance as its population or industry changes, then it must pay a steep price for backsliding. It is sensible for the Federal agency to give localities that must pay the piper some opportunity to call the tune." *See Sierra Club*, 357 F.3d at 540.

We also disagree that any changes to the major NSR program may result in unmitigated emissions increases, and that by definition, the change interferes with the area's ability to achieve attainment, and is inconsistent with section 110(l). First, no unmitigated growth should occur in any nonattainment area. Every State must develop an attainment demonstration that accounts for growth within its attainment plan. Accordingly, States would need to mitigate all growth projected within the attainment plan through control measures within the SIP to develop an approvable attainment plan. The major NSR program provides an extra measure of benefit on top of the control measures already contained in the SIP to address any further unanticipated future growth.

Moreover, we disagree with the assumption of some commenters that any change in a SIP requirement is necessarily subject to review under section 110(l) of the Act. The Supreme Court upheld our plantwide stationary source definition as a reasonable balance between reducing air pollution and economic growth even though this change allowed fewer sources to go through major NSR permitting. *See Chevron*, 467 U.S. at 866. The Act allows us to approve SIP revisions if the State shows that the revision does not interfere with any requirement concerning attainment and RFP. We conclude that this will be the case in all areas removing 1-hour NSR programs as 8-hour NSR will still be required and thus no emissions increases will result.

We also disagree with the commenter who indicates that revisions under section 110(l) of the Act may not be approved unless a State shows that maintaining the requirement would

[7] We are referring to South Coast Air Quality Management District. There are several other State and local agencies, including some in California, in which the classification under the 8-hour standard is lower than that under the 1-hour standard. We are not aware of any of these agencies relying on the major stationary source thresholds or the offset ratios under the 1-hour classification to assure RFP or attain the 1-hour standard.

interfere with progress toward attainment or that the requirement is not feasible. We do not believe that such an overly restrictive interpretation of section 110(l) is consistent with Congress' intent that States retain flexibility in carrying out their responsibilities for pollution control. We conclude that the words of section 110(l) simply do not provide for such a strict interpretation.

4. Has Any Individual State or Local Agency Relied on Major NSR as a "Control Measure" To Reduce Overall Base Year Emissions in a Rate of Progress Plan or Attainment Demonstration?

a. Comment and Response—A

Comment. One commenter argued that our assumption that "(S)tates do not rely on Major NSR to achieve emissions reductions and reach attainment," is erroneous. According to the commenter, the South Coast Air Quality Management District's (SCAQMD's) NSR program was an important element of its attainment demonstration. Their 1989 Air Quality Management Plan (AQMP) contained Control Measure F–8, which, as adopted in final form in 1990 was estimated to result in emissions reductions of 44 tons per day (TPD) of ROG, 33 TPD of NO_x, 4 TPD of SO_x, 21 TPD of CO, and 29 TPD of PM10. The commenter argued that while the NSR program no longer appears as a control strategy in SCAQD's latest AQMP because the rule has been adopted, the reductions from this measure are contained in the current SIP revision in the baseline and are still being relied upon to demonstrate attainment. According to the commenter, they do not understand how any area could not rely on NSR as part of its attainment demonstration, at least by including NSR reductions in the baseline.

Response. We agree that emissions from sources already subject to major NSR permits are part of the States' baseline emissions. For this reason, our final rule requires all States to maintain requirements imposed on major sources through permits they issued under the 1-hour major NSR program before June 15, 2005. However, the comment does not indicate that any areas rely on further reductions from 1-hour major NSR programs to make further progress toward attainment.

b. Comment and Response—B

Comment. One commenter stated that we concede that the SCAQMD does assume a LAER level of control in projecting emissions. (70 FR 17024). They contend, however, that we fail to explain why the District's SIP-approved NSR rule would not be relaxed if we must automatically approve a SIP revision that would result in a relaxation of SCAQMD's requirements.

Response. The SCAQMD's major NSR program contains many requirements that are beyond the Federal minimum requirements for either the 1-hour or 8-hour standard. In light of this, there is no reason to believe that SCAQMD would make revisions to its major NSR program even given the opportunity provided under today's final action.

c. Comment and Response—C

Comment. One commenter contended that on March 2, 1995, we issued a policy establishing an alternative attainment process whereby States could commit to a two-phase approach for meeting CAA statutory requirements. The Phase I requirements include adoption of specific control strategies necessary to meet the post 1996 ROP plan through 1999. The Phase II requirements include participation in a two-year regional consultative process with other States in the eastern U.S. and with EPA to identify and commit to additional emissions reductions necessary to attain health-based ozone standards by the CAA deadlines. The commenter stated that under this policy Pennsylvania (PA) submitted the Phase I portion which includes a 1999 24 percent reduction milestone. In addition, Pennsylvania identified its NSR program as a "control measure" put in place to reduce emissions through their offset requirements and through the installation of LAER control equipments. On October 26, 2001, the commenter asserted that the EPA approved these plans as meeting the requirements of section 182(c)(2) and (d) of the Act, 42 U.S.C. section 7511a(c)(2) and (d). (66 FR 54143).

Response. We reviewed the information related to Pennsylvania's ROP plans. The reductions the commenter claims are related to Pennsylvania's major NSR program originated from retrospective, source/process shutdowns which occurred after January 1, 1991 but before the ROP milestone date and before the date the ROP plan was prepared.[8] Importantly, before we approved Pennsylvania's ROP these shutdowns were not available as offsets.[9] Moreover, the emissions reductions were not necessarily generated to meet any need to create an offset because a new source was being constructed. Pennsylvania requires sources to register ERCs for future use as offsets or for contemporaneous netting. Although, Pennsylvania claims that its regulations limit any source in the Philadelphia area to using only 77% of each ERC that is registered (banked) in a timely manner, we are unable to identify such a requirement within Pennsylvania's major NSR regulations. *See* 25 Pa. Code Chapter 127, Subchapter E. Nonetheless, it appears that Pennsylvania's ROP plan may confiscate a portion of the emissions reduction credits contained in the bank and prevent their future use as offsets. However, our guidance for ROP plans does not allow credit for prospective reductions from offsets due to the inherent uncertainty in projecting new source growth, and in determining the amount of the emissions reductions from offsets that will be needed to offset minor source growth. *See* section 2.2 Emissions Offsets of "Guidance on the Relationship Between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act," (EPA–452/R–93–007), May 1993 and "Guidance on the Post '96 Rate-of-Progress Plan (RPP) and Attainment Demonstration" (EPA–452/R–93–015) Corrected version of February 18, 1994.[10]

In the proposed rulemaking notice to approve Pennsylvania's ROP plan, we identified this measure as "Shutdowns." (66 FR 44570). We did not relate these shutdowns to offsets, LAER requirements, or any other requirement in Pennsylvania's major NSR program. Likewise, in the final rulemaking notice approving the attainment demonstration and ROP plans for the Philadelphia area we again identified this measure as "Shutdowns." (66 FR 54146). We discussed the status of Pennsylvania's NSR regulation for the Philadelphia area, but only in context of the issue concerning the relationship between the use of shutdowns as offsets only after

[8] In our review of Pennsylvania's ROP plans we determined that some of the shutdowns used by Pennsylvania in their plans were not discounted as the Pennsylvania Department of Environmental Protection (DEP) stated in its May 4, 2005 comment letter because the sources did not register the emissions reduction credits (ERCs) as required by 25 Pa. Code subchapter E. Instead of using 23% of the shutdowns registered as ERCs in the ROP plan, the PA Department of Environmental Protection (DEP) used 100% of the past unregistered shutdown reductions to meet the ROP requirements.

[9] See 40 CFR part 51.165(a)(ii)(C) as of October 26, 2001. We reiterated this requirement in our October 26, 2001 final rule (66 FR at 54148) approving Pennsylvania's ROP plan and attainment demonstration. We also identified this issue in the preambles to pertinent proposed and final rulemaking notices on the PA NSR SIP. (62 FR 25060, 62 FR 64722).

[10] Although these guidance documents indicate that offsets after 1990 could be used in a milestone compliance demonstration, no State has actually submitted a milestone compliance demonstration including these offsets.

we approve the attainment demonstration. (66 FR 54148).

Likewise, the Pennsylvania DEP did not identify NSR as a "control measure" in its Phase II plan. Instead it identified the measures as "shutdowns." Tables 4a and 4b to "State Implementation Plan (SIP) Revision for the Philadelphia Interstate Ozone Nonattainment Area, Meeting the Requirements of the Alternative Ozone Attainment Demonstration Policy, Phase II," dated April 1998. (This was submitted with an April 30, 1998 letter from James Seif, Secretary, Pennsylvania Department of Environmental Protection, to Judy Katz, Director, Air, Radiation, and Toxics Division, EPA Region III.)

Based on this information, we conclude that Pennsylvania did not rely on major NSR offsets or LAER requirements to generate emissions reductions for Pennsylvania's ROP plan, but instead confiscated shutdown ERC credits (some of which were never creditable as offsets, and others which may have been creditable as offsets) and prevented such credits from being used as offsets. If Pennsylvania disagrees with our conclusions and continues to believe the State relies on higher offsets ratios and lower major stationary source requirements to achieve attainment, then Pennsylvania should include these requirements in its nonattainment major NSR program for the 8-hour standard. Further, Pennsylvania is free to retain 1-hour NSR offset ratios and major source sizes should it choose to do so as part of its 8-hour SIP.

d. Comment and Response—D

Comment. One commenter raised concerns regarding several areas (*i.e.*, Houston-Galveston-Brazoria area, Chicago-Gary Lake County area) where the commenter asserted that relaxation in affected areas would result in emissions increases, whereby any SIP revision would interfere with timely progress and timely attainment. The commenter asserted that the risk of increased emissions in such areas is compounded by the allowance of totally new facilities being able to locate and emit increased pollution in these and other nonattainment areas without obtaining offsets and without installing LAER as would have been required under their 1-hour classifications. The commenter provided data on the number of sources in the area who could potentially increase emissions without undergoing major NSR review.

Another commenter reported that the way in which the EPA has chosen to implement the 8-hour ozone NAAQS will interfere with Delaware's ability to solve their air quality problems related to construction and modification of major stationary sources and will result in backsliding. The commenter asserted that relaxation of emissions control and offset requirements will inhibit Delaware's attempts to control emissions, because more sources will be exempt from compliance with regulatory requirements.

Response. The commenter provided no specific information indicating how these areas rely on major NSR for attainment purposes or how changes to the major NSR requirements will interfere with the areas' ability to reach attainment. Although the commenter supplied data on the number of sources which could potentially increase emissions, the commenter did not correlate this information with an estimate of the number of these sources that are likely to undertake modifications. Moreover, States remain under an independent statutory requirement to assure that emissions from the construction and modification of stationary sources do not interfere with attaining or maintaining the NAAQS. The EPA continues to believe that areas will be able to demonstrate timely attainment through controls on existing sources in conjunction with appropriate 8-hour NSR on new major sources.

e. Comment and Response—E

Comment. One commenter stated we cited NSR among the "control measures" that provide reductions toward attainment and that New Hampshire relied on in the modeled 1-hour attainment demonstration for ozone. (67 FR 64582, 64586).

Response. We reviewed the cited **Federal Register** notice. References to NSR appear in two tables within Section A. "CAA Measures and Measures Relied on in the Modeled Attainment Demonstration SIP." The tables are entitled "CAA Requirements for Serious Areas" and "Control Measures in the One-Hour Ozone Attainment Plan for the New Hampshire Portion of the Boston-Lawrence-Worcester, MA–NH Serious Ozone Nonattainment Area." We listed NSR in these tables to illustrate that New Hampshire had an approved NSR SIP as required by the Act. However, the attainment modeling that was performed to support the New Hampshire attainment demonstration did not account for any emissions reductions from NSR. Accordingly, we conclude that New Hampshire did not rely on any reductions from NSR to reach attainment.[11]

[11] *See* EPA docket entry number OAR–2001–0004–0817, Memorandum from Richard Burkhart, Environmental Scientist, U.S. EPA to David Conroy, Manager Air Quality Planning Unit, "Additional Information regarding the Approval of the New Hampshire One-Hour Ozone Attainment Demonstration," (June 10, 2005).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (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.

Pursuant to the terms of Executive Order 12866, it has been determined that this final action is not a "significant regulatory action" within the meaning of the Executive Order. Today's reconsideration notice merely proposes to retain the position we adopted in the final Phase I rule.

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.* This rule only interprets the requirements to develop State or tribal implementation plans to satisfy the statutory requirements for major NSR. This action will not impose any new paperwork requirements. However, OMB previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the Paperwork Reduction Act. A copy of the OMB-approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, or by calling (202) 566–1672. Pleas[illegible] refer to

OMB control number 2060–0003, EPA ICR number 1230.17 when making your request.

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)

The RFA generally requires an agency to prepare an RFA of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 final action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (See 13 CFR 121.201); (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final action on reconsideration on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final action on reconsideration will not impose any requirements on small entities. This reconsideration notice reaffirms our April 4, 2005 rule and the statutory obligations for States and Tribes to implement the major NSR program for the 8-hour ozone NAAQS.

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 1 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 as to 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.

In promulgating the Phase I Rule, we determined that this final action on reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Therefore, we concluded that the Phase I Rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons we stated when we promulgated the Phase I Rule, we conclude that the issues addressed in this final action on reconsideration are not subject to the UMRA. The EPA also determined that this final action contains no regulatory requirements that might significantly or uniquely affect small governments, including tribal governments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255), 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 final action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The action specifies the statutory obligations of States and Tribes in implementing the major NSR program in 8-hour ozone nonattainment areas. The Act establishes the scheme whereby States take the lead in developing plans for EPA to approve into the State plan for implementing the major NSR program. This final action would not modify the relationship of the States and EPA for purposes of developing programs to implement major NSR. Thus, Executive Order 13132 does not apply to this action. Nonetheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicited comment on aspects of the final rule being reconsidered from State and local officials. We received 6 comment letters from State and local district representatives and 1 comment letter from the Baton Rouge Chamber of Commerce. Section III.C. of this preamble presents a summary of their significant comments and our response to them.

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), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." This final action on reconsideration does not have "tribal implications," as specified in Executive Order 13175.

The purpose of this final action on reconsideration is to present EPA's conclusions based on the reconsideration process which allowed for public testimony and comment on the reconsidered aspects of the Phase I 8-hour ozone rule. The tribal authority rule (TAR) gives Tribes the opportunity to develop and implement Act programs such as the major NSR program, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. For the same reasons that we stated in the Phase I Rule, we conclude that this final action does not have Tribal implications as defined by Executive Order 13175. To date, no Tribe has chosen to implement a major NSR program. Moreover, this final action does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final action relates to reconsideration of one aspect of the Phase I Rule to implement the 8-hour ozone NAAQS. For the same reasons stated with respect to the Phase I Rule, we do not believe the Rule, or this final action on reconsideration, is subject to Executive Order 13045. The Phase I Rule implements a previously-promulgated health-based Federal standard, the 8-hour ozone NAAQS. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR Part 50, National Ambient Air Quality Standards for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38855, 62 FR 38860 and 62 FR 38865).

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

This final action on reconsideration 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) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Information on the methodology and data regarding the assessment of potential energy impacts in implementing programs under the 8-hour ozone NAAQS is found in Chapter 6 of U.S. EPA 2003, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. April 24, 2003.

I. National Technology Transfer and 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 (for example, 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. Today's final action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The EPA concluded that the Phase I Rule should not raise any environmental justice issues; for the same reasons, the issues raised in this reconsideration notice should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety. The final reconsidered action provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

K. Congressional Review Act

The Congressional Review Act, section 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. The EPA will submit a report containing this final action on reconsideration and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General for the United States prior to publication of the final action 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). Therefore, this action will be effective August 8, 2005.

V. Statutory Authority

The statutory authority for this action is provided by sections 307(d)(7)(B), 101, 111, 114, 116, and 301 of the Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This notice is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

VI. Judicial Review

Under section 307(b)(1) of the Act, the opportunity to file a petition for judicial review of the April 30, 2004 final rule has passed. Judicial review of today's final action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 6, 2005. Filing a petition for review by the Administrator of this final action does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 51

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, NAAQS, Nitrogen oxides, Ozone, SIP, Volatile organic compounds.

Dated: June 30, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–13483 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AZ–NESHAPS–131a; FRL–7935–2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pima County Department of Environmental Quality; State of Nevada; Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants (NESHAPs) in Arizona and Nevada. Several NESHAPs were delegated to the Pima County Department of Environmental Quality on December 28, 2004, and to the Nevada Division of Environmental Protection on April 15, 2005. The purpose of this action is to update the listing in the Code of Federal Regulations.

DATES: This rule is effective on September 6, 2005 without further notice, unless EPA receives adverse comments by August 8, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*. Copies of the request for delegation and other supporting documentation are available for public inspection at EPA's Region IX office during normal business hours by appointment.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in the Code of Federal Regulations, Title 40 (40 CFR), Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of State rules or programs under section 112(l) (see 58 FR 62262). Subpart E was later amended on September 14, 2000 (see 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

B. PDEQ Delegations

On October 30, 1996, EPA approved the Pima County Department of Environmental Quality's (PDEQ's) program for accepting delegation of CAA section 112 standards that are unchanged from Federal standards as promulgated (see 61 FR 55910). Additional revisions to that program were approved on September 23, 1998 (see 63 FR 50769). On June 28, 1999, EPA published a direct final action delegating to PDEQ several NESHAPs (see 64 FR 34560). That action explained the procedure for EPA to grant future delegations to PDEQ by letter, with periodic **Federal Register** listings of standards that have been delegated. On November 8, 2004, PDEQ requested delegation of the following NESHAPs contained in 40 CFR part 63:

- Subpart S—NESHAP from the Pulp and Paper Industry
- Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
- Subpart AA—NESHAP from Phosphoric Acid Manufacturing Plants
- Subpart BB—NESHAP from Phosphate Fertilizers Production Plants
- Subpart DD—NESHAP from Off-Site Waste and Recovery Operations
- Subpart HH—NESHAP from Oil and Natural Gas Production Facilities
- Subpart LL—NESHAP for Primary Aluminum Reduction Plants
- Subpart OO—National Emission Standards for Tanks—Level 1
- Subpart PP—National Emission Standards for Containers
- Subpart QQ—National Emission Standards for Surface Impoundments
- Subpart RR—National Emission Standards for Individual Drain Systems
- Subpart SS—National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
- Subpart TT—National Emission Standards for Equipment Leaks—Control Level 1
- Subpart UU—National Emission Standards for Equipment Leaks—Control Level 2 Standards
- Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators
- Subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2
- Subpart YY—NESHAP for Source Categories: Generic MACT Standards
- Subpart CCC—NESHAP for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants
- Subpart DDD—NESHAP for Mineral Wool Production
- Subpart EEE—NESHAP from Hazardous Waste Combustors
- Subpart GGG—National Emission Standards for Pharmaceuticals Production
- Subpart HHH—NESHAP from Natural Gas Transmission and Storage Facilities
- Subpart III—NESHAP for Flexible Polyurethane Foam Production
- Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
- Subpart LLL—NESHAP from the Portland Cement Manufacturing Industry
- Subpart MMM—NESHAP for Pesticide Active Ingredient Production
- Subpart NNN—NESHAP for Wool Fiberglass Manufacturing

- Subpart OOO—National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
- Subpart PPP—National Emission Standards for Polyether Polyols Production
- Subpart QQQ—National Emission Standards for Primary Copper Smelting
- Subpart RRR—National Emission Standards for Secondary Aluminum Production
- Subpart TTT—National Emission Standards for Primary Lead Smelting
- Subpart UUU—National Emission Standards for Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Plan Units
- Subpart VVV—NESHAP: Publicly Owned Treatment Works
- Subpart XXX—National Emission Standards for Ferroalloys Production
- Subpart AAAA—National Emission Standards for Municipal Solid Waste Landfills
- Subpart CCCC—National Emission Standards for Manufacturing of Nutritional Yeast
- Subpart EEEE—National Emission Standards for Organic Liquids Distribution (Non-Gasoline)
- Subpart FFFF—NESHAP: Miscellaneous Organic Chemical Manufacturing
- Subpart GGGG—National Emission Standards for Solvent Extraction for Vegetable Oil Production
- Subpart HHHH—National Emission Standards for Wet-Formed Fiberglass Mat Production
- Subpart JJJJ—National Emission Standards for Paper and Other Web Coating
- Subpart KKKK—NESHAP: Surface Coating of Metal Cans
- Subpart MMMM—NESHAP for Surface Coating of Miscellaneous Metal Parts and Products
- Subpart NNNN—National Emission Standards for Large Appliances
- Subpart OOOO—NESHAP: Printing, Coating, and Dyeing of Fabrics and Other Textiles
- Subpart QQQQ—National Emission Standards for Wood Building Products
- Subpart RRRR—National Emission Standards for Surface Coating of Metal Furniture
- Subpart SSSS—National Emission Standards for Surface Coating of Metal Coil
- Subpart TTTT—National Emission Standards for Leather Finishing Operations
- Subpart UUUU—National Emission Standards for Cellulose Products Manufacturing
- Subpart VVVV—National Emission Standards for Boat Manufacturing
- Subpart WWWW—National Emission Standards for Reinforced Plastics Composites Production
- Subpart XXXX—National Emission Standards for Tire Manufacturing
- Subpart YYYY—NESHAP for Stationary Combustion Turbines
- Subpart AAAAA—NESHAP for Lime Manufacturing Plants
- Subpart BBBBB—National Emission Standards for Semiconductor Manufacturing
- Subpart CCCCC—National Emission Standards for Coke Ovens: Pushing, Quenching, and Battery Stacks
- Subpart EEEEE—NESHAP for Iron and Steel Foundries
- Subpart FFFFF—National Emission Standards for Integrated Iron and Steel
- Subpart GGGGG—NESHAP: Site Remediation
- Subpart HHHHH—NESHAP: Miscellaneous Coating Manufacturing
- Subpart IIIII—NESHAP: Mercury Emissions from Mercury Cell Chlor-Alkali Plants
- Subpart JJJJJ—National Emission Standards for Brick and Structural Clay Products Manufacturing
- Subpart KKKKK—NESHAP for Clay Ceramics Manufacturing
- Subpart LLLLL—National Emission Standards for Asphalt Roofing and Processing
- Subpart MMMMM—National Emission Standards for Flexible Polyurethane Foam Fabrication Operations
- Subpart NNNNN—NESHAP: Hydrochloric Acid Production
- Subpart PPPPP—National Emission Standards for Engine Test Cells/Stands
- Subpart QQQQQ—National Emission Standards for Friction Products Manufacturing
- Subpart RRRRR—NESHAP: Taconite Iron Ore Processing
- Subpart SSSSS—National Emission Standards for Refractory Products Manufacturing
- Subpart TTTTT—NESHAP for Primary Magnesium Refining

On December 28, 2004, EPA granted delegation to PDEQ for these NESHAPs, along with any amendments to previously-delegated NESHAPs, as of July 1, 2004. Today's action is serving to notify the public of the December 28, 2004, delegation and to codify these delegations into the Code of Federal Regulations.

C. NDEP Delegations

On May 27, 1998, EPA published a direct final action delegating to the Nevada Division of Environmental Protection (NDEP) several NESHAPs and approving NDEP's delegation mechanism for future standards (see 63 FR 28906). That action explained the procedure for EPA to grant delegations to NDEP by letter, with periodic **Federal Register** listings of standards that have been delegated. On December 27, 2004, NDEP requested delegation of the following NESHAPs contained in 40 CFR part 63:

- Subpart J—NESHAP for Polyvinyl Chloride and Copolymers Production
- Subpart MM—NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
- Subpart XX—National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
- Subpart PPP—NESHAP for Polyether Polyols Production
- Subpart QQQ—NESHAP for Primary Copper Smelting
- Subpart RRR—NESHAP for Secondary Aluminum Production
- Subpart TTT—NESHAP for Primary Lead Smelting
- Subpart UUU—NESHAP for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
- Subpart VVV—NESHAP: Publicly Owned Treatment Works
- Subpart XXX—NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese
- Subpart AAAA—NESHAP: Municipal Solid Waste Landfills
- Subpart CCCC—NESHAP: Manufacturing of Nutritional Yeast
- Subpart EEEE—NESHAP for Organic Liquids Distribution (Non-Gasoline)
- Subpart GGGG—NESHAP: Solvent Extraction for Vegetable Oil Production
- Subpart HHHH—NESHAP for Wet-Formed Fiberglass Mat Production
- Subpart JJJJ—NESHAP: Paper and Other Web Coating
- Subpart KKKK—NESHAP: Surface Coating of Metal Cans
- Subpart MMMM—NESHAP for Surface Coating of Miscellaneous Metal Parts and Products
- Subpart NNNN—NESHAP: Surface Coating of Large Appliances
- Subpart OOOO—NESHAP: Printing, Coating, and Dyeing of Fabrics and Other Textiles
- Subpart QQQQ—NESHAP: Surface Coating of Wood Building Products
- Subpart RRRR—NESHAP: Surface Coating of Metal Furniture
- Subpart SSSS—NESHAP: Surface Coating of Metal Coil
- Subpart TTTT—NESHAP for Leather Finishing Operations
- Subpart UUUU—NESHAP for Cellulose Products Manufacturing
- Subpart VVVV—NESHAP for Boat Manufacturing
- Subpart WWWW—NESHAP: Reinforced Plastic Composites Production
- Subpart XXXX—NESHAP: Rubber Tire Manufacturing
- Subpart YYYY—NESHAP for Stationary Combustion Turbines
- Subpart ZZZZ—NESHAP for Stationary Reciprocating Internal Combustion Engines
- Subpart AAAAA—NESHAP for Lime Manufacturing Plants
- Subpart BBBBB—NESHAP for Semiconductor Manufacturing
- Subpart CCCCC—NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks
- Subpart DDDDD—NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters
- Subpart FFFFF—NESHAP for Integrated Iron and Steel Manufacturing Facilities
- Subpart JJJJJ—NESHAP for Brick and Structural Clay Products Manufacturing
- Subpart KKKKK—NESHAP for Clay Ceramics Manufacturing

- Subpart LLLLL—NESHAP: Asphalt Processing and Asphalt Roofing Manufacturing
- Subpart MMMMM—NESHAP: Flexible Polyurethane Foam Fabrication Operations
- Subpart NNNNN—NESHAP: Hydrochloric Acid Production
- Subpart PPPPP—NESHAP for Engine Test Cells/Stands
- Subpart QQQQQ—NESHAP for Friction Materials Manufacturing Facilities
- Subpart SSSSS—NESHAP for Refractory Products Manufacturing

On April 15, 2005, EPA granted delegation to NDEP for these NESHAPs, along with any amendments to previously-delegated NESHAPs, as of July 1, 2004. EPA also granted to NDEP delegation of amendments to 40 CFR part 63, subpart YYYY (Stationary Combustion Turbines) which were published in the **Federal Register** on August 18, 2004. Today's action is serving to notify the public of the April 15, 2005, delegations and to codify these delegations into the Code of Federal Regulations.

II. EPA Action

Today's document serves to notify the public of the December 28, 2004, delegation of NESHAPs to PDEQ, and the April 15, 2005, delegation of NESHAPs to NDEP. Today's action will codify these delegations into the Code of Federal Regulations.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely updates the list of approved delegations in the Code of Federal Regulations and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely updates the list of already-approved delegations, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State delegation submissions, our role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove State submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State submission, to use VCS in place of a State submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: June 24, 2005.

Deborah Jordan,

Director, Air Division, Region IX.

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by revising paragraphs (a)(3) and (a)(28)(i) to read as follows:

§ 63.99 Delegated Federal authorities.

(a)* * *

(3) *Arizona.* The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCESD [2]	PDEQ [3]	PCAQCD [4]
A	General Provisions	X	X	X	X
F	Synthetic Organic Chemical Manufacturing Industry	X	X	X	X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X	X	X	X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X	X	X	X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X	X	X	X
L	Coke Oven Batteries	X	X	X	X
M	Perchloroethylene Dry Cleaning	X	X	X	X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	X	X
O	Ethylene Oxide Sterilization Facilities	X	X	X	X
Q	Industrial Process Cooling Towers	X	X	X	X
R	Gasoline Distribution Facilities	X	X	X	X
S	Pulp and Paper	X		X	
T	Halogenated Solvent Cleaning	X	X	X	X
U	Group I Polymers and Resins	X	X	X	X
W	Epoxy Resins Production and Non-Nylon Polyamides Production.	X	X	X	X
X	Secondary Lead Smelting	X	X	X	X
AA	Phosphoric Acid Manufacturing Plants	X		X	
BB	Phosphate Fertilizers Production Plants	X		X	
CC	Petroleum Refineries	X	X	X	X
DD	Off-Site Waste and Recovery Operations	X	X	X	X
EE	Magnetic Tape Manufacturing Operations	X	X	X	X
GG	Aerospace Manufacturing and Rework Facilities	X	X	X	X
HH	Oil and Natural Gas Production Facilities	X		X	
JJ	Wood Furniture Manufacturing Operations	X	X	X	X
KK	Printing and Publishing Industry	X	X	X	X
LL	Primary Aluminum Reduction Plants	X		X	
OO	Tanks—Level 1	X	X	X	X
PP	Containers	X	X	X	X
QQ	Surface Impoundments	X	X	X	X
RR	Individual Drain Systems	X	X	X	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X		X	
TT	Equipment Leaks—Control Level 1	X		X	
UU	Equipment Leaks—Control Level 2	X		X	
VV	Oil-Water Separators and Organic-Water Separators	X	X	X	X
WW	Storage Vessels (Tanks) —Control Level 2	X		X	
YY	Generic MACT Standards	X		X	
CCC	Steel Pickling	X		X	
DDD	Mineral Wool Production	X		X	
EEE	Hazardous Waste Combustors	X		X	
GGG	Pharmaceuticals Production	X		X	
HHH	Natural Gas Transmission and Storage Facilities	X		X	
III	Flexible Polyurethane Foam Production	X		X	
JJJ	Group IV Polymers and Resins	X	X	X	X
LLL	Portland Cement Manufacturing Industry	X		X	
MMM	Pesticide Active Ingredient Production	X		X	
NNN	Wool Fiberglass Manufacturing	X		X	
OOO	Manufacture of Amino/Phenolic Resins	X		X	
PPP	Polyether Polyols Production	X		X	
QQQ	Primary Copper Smelting			X	
RRR	Secondary Aluminum Production			X	
TTT	Primary Lead Smelting	X		X	
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.			X	
VVV	Publicly Owned Treatment Works			X	
XXX	Ferroalloys Production	X		X	
AAAA	Municipal Solid Waste Landfills			X	
CCCC	Manufacturing of Nutritional Yeast			X	
EEEE	Organic Liquids Distribution (non-gasoline)			X	
FFFF	Miscellaneous Organic Chemical Manufacturing			X	
GGGG	Solvent Extraction for Vegetable Oil Production			X	
HHHH	Wet-Formed Fiberglass Mat Production			X	
JJJJ	Paper and Other Web Coating			X	
KKKK	Surface Coating of Metal Cans			X	
MMMM	Miscellaneous Metal Parts and Products			X	
NNNN	Large Appliances			X	

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA—Continued

Subpart	Description	ADEQ [1]	MCESD [2]	PDEQ [3]	PCAQCD [4]
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles.			X	
QQQQ	Wood Building Products			X	
RRRR	Surface Coating of Metal Furniture			X	
SSSS	Surface Coating of Metal Coil			X	
TTTT	Leather Finishing Operations			X	
UUUU	Cellulose Products Manufacturing			X	
VVVV	Boat Manufacturing			X	
WWWW	Reinforced Plastics Composites Production			X	
XXXX	Tire Manufacturing			X	
YYYY	Stationary Combustion Turbines			X	
AAAAA	Lime Manufacturing Plants			X	
BBBBB	Semiconductor Manufacturing			X	
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks			X	
EEEEE	Iron and Steel Foundries			X	
FFFFF	Integrated Iron and Steel			X	
GGGGG	Site Remediation			X	
HHHHH	Miscellaneous Coating Manufacturing			X	
IIIII	Mercury Emissions from Mercury Cell Chlor-Alkali Plants.			X	
JJJJJ	Brick and Structural Clay Products Manufacturing			X	
KKKKK	Clay Ceramics Manufacturing			X	
LLLLL	Asphalt Roofing and Processing			X	
MMMMM	Flexible Polyurethane Foam Fabrication Operation			X	
NNNNN	Hydrochloric Acid Production			X	
PPPPP	Engine Test Cells/Stands			X	
QQQQQ	Friction Products Manufacturing			X	
RRRRR	Taconite Iron Ore Processing			X	
SSSSS	Refractory Products Manufacturing			X	
TTTTT	Primary Magnesium Refining			X	

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Environmental Services Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

* * * * *

(28) * * *

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Nevada. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
A	General Provisions	X	X	
F	Synthetic Organic Chemical Manufacturing Industry	X		
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X		
H	Organic Hazardous Air Pollutants: Equipment Leaks	X		
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X		
J	Polyvinyl Chloride and Copolymers Production	X		
L	Coke Oven Batteries	X		
M	Perchloroethylene Dry Cleaning	X	X	
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X	X	
O	Ethylene Oxide Sterilization Facilities	X	X	
Q	Industrial Process Cooling Towers	X		
R	Gasoline Distribution Facilities	X	X	
S	Pulp and Paper	X		
T	Halogenated Solvent Cleaning	X	X	
U	Group I Polymers and Resins	X		
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X		
X	Secondary Lead Smelting	X		
Y	Marine Tank Vessel Loading Operations	X		
AA	Phosphoric Acid Manufacturing Plants	X		
BB	Phosphate Fertilizers Production Plants	X		
CC	Petroleum Refineries	X		
DD	Off-Site Waste and Recovery Operations	X		
EE	Magnetic Tape Manufacturing Operations	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
GG	Aerospace Manufacturing and Rework Facilities	X		
HH	Oil and Natural Gas Production Facilities	X		
II	Shipbuilding and Ship Repair (Surface Coating)	X		
JJ	Wood Furniture Manufacturing Operations	X		
KK	Printing and Publishing Industry	X	X	
LL	Primary Aluminum Reduction Plants	X		
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	X		
OO	Tanks—Level 1	X		
PP	Containers	X		
QQ	Surface Impoundments	X		
RR	Individual Drain Systems	X		
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X		
TT	Equipment Leaks—Control Level 1	X		
UU	Equipment Leaks—Control Level 2	X		
VV	Oil-Water Separators and Organic-Water Separators	X		
WW	Storage Vessels (Tanks)—Control Level 2	X		
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	X		
YY	Generic MACT Standards	X		
CCC	Steel Pickling	X		
DDD	Mineral Wool Production	X		
EEE	Hazardous Waste Combustors	X		
GGG	Pharmaceuticals Production	X		
HHH	Natural Gas Transmission and Storage Facilities	X		
III	Flexible Polyurethane Foam Production	X		
JJJ	Group IV Polymers and Resins	X		
LLL	Portland Cement Manufacturing Industry	X		
MMM	Pesticide Active Ingredient Production	X		
NNN	Wool Fiberglass Manufacturing	X		
OOO	Manufacture of Amino/Phenolic Resins	X		
PPP	Polyether Polyols Production	X		
QQQ	Primary Copper Smelting	X		
RRR	Secondary Aluminum Production	X		
TTT	Primary Lead Smelting	X		
UUU	Petroleum Refineries: Catalytic Cracking, Catalytic Reforming, and Sulfur Recovery Units.	X		
VVV	Publicly Owned Treatment Works	X		
XXX	Ferroalloys Production	X		
AAAA	Municipal Solid Waste Landfills	X		
CCCC	Manufacturing of Nutritional Yeast	X		
EEEE	Organic Liquids Distribution (non-gasoline)	X		
GGGG	Solvent Extraction for Vegetable Oil Production	X		
HHHH	Wet-Formed Fiberglass Mat Production	X		
JJJJ	Paper and Other Web Coating	X		
KKKK	Surface Coating of Metal Cans	X		
MMMM	Miscellaneous Metal Parts and Products	X		
NNNN	Large Appliances	X		
OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles	X		
QQQQ	Wood Building Products	X		
RRRR	Surface Coating of Metal Furniture	X		
SSSS	Surface Coating of Metal Coil	X		
TTTT	Leather Finishing Operations	X		
UUUU	Cellulose Products Manufacturing	X		
VVVV	Boat Manufacturing	X		
WWWW	Reinforced Plastics Composites Production	X		
XXXX	Tire Manufacturing	X		
YYYY	Stationary Combustion Turbines	X		
ZZZZ	Stationary Reciprocating Internal Combustion Engines	X		
AAAAA	Lime Manufacturing Plants	X		
BBBBB	Semiconductor Manufacturing	X		
CCCCC	Coke Oven: Pushing, Quenching and Battery Stacks	X		
DDDDD	Industrial, Commercial, and Institutional Boiler and Process Heaters	X		
FFFFF	Integrated Iron and Steel	X		
JJJJJ	Brick and Structural Clay Products Manufacturing	X		
KKKKK	Clay Ceramics Manufacturing	X		
LLLLL	Asphalt Roofing and Processing	X		
MMMMM	Flexible Polyurethane Foam Fabrication Operation	X		
NNNNN	Hydrochloric Acid Production	X		
PPPPP	Engine Test Cells/Stands	X		
QQQQQ	Friction Products Manufacturing	X		

DELEGATION STATUS FOR PART 63 STANDARDS—NEVADA—Continued

Subpart	Description	NDEP [1]	WCAQMD [2]	CCDAQM [3]
SSSSS	Refractory Products Manufacturing	X		

[1] Nevada Division of Environmental Protection.
[2] Washoe County Air Quality Management Division.
[3] Clark County Department of Air Quality Management.

* * * * *

[FR Doc. 05–13485 Filed 7–7–05; 8:45 am]
BILLING CODE 6560–50–U

Proposed Rules

Federal Register
Vol. 70, No. 130
Friday, July 8, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21748; Directorate Identifier 2005–NM–071–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200 and –300 series airplanes. For certain airplanes, this proposed AD would require repetitive inspections for discrepancies of the tube assemblies and insulation of the metered fire extinguisher system and the bleed air duct couplings of the auxiliary power unit (APU) located in the aft cargo compartment; and corrective actions if necessary. For certain other airplanes, this proposed AD would require a one-time inspection for sufficient clearance between the fire extinguishing tube and the APU bleed air duct in the aft cargo compartment, and modification if necessary. This proposed AD is prompted by one report indicating that an operator found a hole in the discharge tube assembly for the metered fire extinguishing system; and another report indicating that an operator found chafing of the fire extinguishing tube against the APU duct that resulted in a crack in the tube. We are proposing this AD to prevent fire extinguishing agent from leaking out of the tube assembly in the aft cargo compartment which, in the event of a fire in the aft cargo compartment, could result in an insufficient concentration of fire extinguishing agent, and consequent inability of the fire extinguishing system to suppress the fire.

DATES: We must receive comments on this proposed AD by August 22, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: 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 service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this 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., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21748; the directorate identifier for this docket is 2005–NM–071–AD.

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–21748; Directorate Identifier 2005–NM–071–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can 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 DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

We have received a report indicating that an operator found a hole in the discharge tube assembly for the metered fire extinguishing system in the aft cargo compartment at station (STA) 1197, on a Model 767–300 series airplane. The hole in the tube assembly was the result of a chafing condition between an auxiliary power unit (APU) bleed air duct coupling and the tube assembly. The tube assembly was attached to the stanchion, approximately 1.75 inches below the correct location. The operator also found incorrect installation of the tube assembly on three additional airplanes. Another report was received indicating that an operator found chafing of the fire extinguishing tube against the APU duct on a Model 767–300ER series airplane, resulting in a crack in the tube at STA 1357. A crack or hole in the tube could allow leakage of the fire extinguishing agent into an area outside the cargo compartment in

the case of an aft cargo fire. In the event of a fire in the aft cargo compartment, these conditions could result in an insufficient concentration of fire extinguishing agent, and consequent inability of the fire extinguishing system to suppress the fire.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002. The service bulletin describes procedures for an inspection for sufficient clearance between the fire extinguishing tube and the APU bleed air duct on the left sidewall from STA 1355 to STA 1365; and modification of the fire extinguishing tube assembly if necessary.

Service Bulletin 767–26A0123 refers to Boeing Service Bulletin 767–26–0118, Revision 2, dated December 21, 2004, as the appropriate source of service information for accomplishing the modification of the fire extinguishing tube assembly. The modification involves replacing one fire extinguishing tube assembly with two fire extinguishing tube assemblies and support provisions, and doing a functional test of the aft metered discharge line.

We have also reviewed Boeing Alert Service Bulletin 767–26A0130, dated December 2, 2004. The service bulletin divides the affected airplanes into Groups 1 and 2, and describes procedures for repetitive detailed inspections for discrepancies of the tube assemblies and insulation of the metered fire extinguishing system in the aft cargo compartment; repetitive general visual inspections for discrepancies of the APU bleed air duct couplings and the tube assemblies of the fire extinguisher in the aft cargo compartment; and corrective actions if necessary. The station locations for the inspections vary, depending on the airplane group specified in the service bulletin. The service bulletin also describes procedures for a functional test.

The discrepancies include signs of chafing or contact between the fire extinguisher tube assemblies, the APU bleed air duct couplings support provisions, and the insulation; loose duct couplings; and incorrect placement of the tube assembly support provisions, and/or the duct couplings.

The corrective actions include repairing or replacing any damaged tube assembly with a new assembly; replacing any damaged insulation with new insulation; applying the correct torque to any loose duct couplings; and moving tube assemblies and/or duct couplings to the correct location.

The installation of tube assemblies in the correct location eliminates the need for the repetitive inspections, provided initial inspections and any necessary corrective actions have been done.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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 airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in Service Bulletin 767–26A0123 and Service Bulletin 767–26A0130, described previously, except as discussed under "Difference Between the Proposed AD and Service Information."

Differences Between the Proposed AD and Service Information

Service Bulletin 767–26A0123 recommends that the actions therein be accomplished "as soon as manpower, materials, and facilities are available." We find that such a non-specific compliance time may not ensure that the proposed actions are accomplished in a timely manner. In developing an appropriate compliance time for these actions, we considered the safety implications, operators' normal maintenance schedules, and the compliance time recommended by the airplane manufacturer. In consideration of these items, we have determined that within 24 months or 8,000 flight hours, whichever is first, represents an appropriate interval of time wherein the proposed actions can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. This compliance time is consistent with the recommendation of the airplane manufacturer.

Service Bulletin 767–26A0123 recommends concurrently accomplishing the service bulletins specified in the table in paragraph 1.B., titled "Concurrent Requirements," for Group 2 airplanes; however, this proposed AD would not include that requirement. The concurrent service bulletins describe procedures for installing a metered fire extinguishing system, but this proposed AD is only applicable to airplanes that already have that system installed.

These differences have been coordinated with the manufacturer.

Clarification of Inspection Type

Service Bulletin 767–26A0123 refers only to an "inspection" for sufficient clearance between the fire extinguishing tube and the APU duct. We have determined that the procedures in the service bulletin should be described as a "general visual inspection." A note has been included in this AD to define this type of inspection.

Costs of Compliance

There are about 734 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 281 airplanes of U.S. registry.

The proposed inspection specified in Service Bulletin 767–26A0123 would 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 the proposed inspection for U.S. operators is $18,265, or $65 per airplane.

The proposed inspections specified in Service Bulletin 767–26A0130 would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspections for U.S. operators is $36,530, or $130 per airplane, per inspection cycle.

The proposed functional test specified in Service Bulletin 767–26A0130 would 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 the proposed functional test for U.S. operators, is $18,265, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–21748; Directorate Identifier 2005–NM–071–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by August 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes; certificated in any category; as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes identified in Boeing Alert Service Bulletin 767–26A0130, dated December 2, 2004.

(2) Group 1 airplanes identified in Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002.

(3) Group 2 airplanes identified in Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002, on which the applicable service bulletin specified in the table in paragraph 1.B., titled "Concurrent Requirements" has been accomplished.

Unsafe Condition

(d) This AD was prompted by one report indicating that an operator found a hole in the discharge tube assembly for the metered fire extinguishing system; and another report indicating that an operator found chafing of the fire extinguishing tube against the auxiliary power unit (APU) duct that resulted in a crack in the tube. We are issuing this AD to prevent fire extinguishing agent from leaking out of the tube assembly in the aft cargo compartment which, in the event of a fire in the aft cargo compartment, could result in an insufficient concentration of fire extinguishing agent, and consequent inability of the fire extinguishing system to suppress the fire.

Compliance

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

Repetitive Inspections

(f) Within 24 months or 8,000 flight hours after the effective date of this AD, whichever is first: Accomplish the actions required by paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For airplanes identified in Boeing Alert Service Bulletin 767–26A0130, dated December 2, 2004: Perform general visual and detailed inspections for discrepancies of the tube assemblies and insulation of the metered fire extinguisher system and the bleed air duct couplings of the APU located in the aft cargo compartment and any applicable corrective actions and functional test, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–26A0130, dated December 2, 2004. Do any applicable corrective actions before further flight in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 24 months or 8,000 flight hours, whichever is first. Installation of the tube assembly in the correct location, in accordance with the service bulletin, terminates the repetitive inspections for that assembly only.

(2) For airplanes identified in Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002: Perform a general visual inspection for sufficient clearance between the fire extinguishing tube and the APU duct on the left sidewall from station 1355 through 1365 inclusive, and do any applicable modification, by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–26A0123, dated August 22, 2002. Do any applicable modification before further flight.

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

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on June 29, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13433 Filed 7–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes; DC–9–20 Series Airplanes; DC–9–30 Series Airplanes; DC–9–40 Series Airplanes; and DC–9–50 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain McDonnell Douglas transport category airplanes. The existing AD requires, among other things, revision of an existing program of structural inspections. This proposed AD would require the implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This proposed AD is prompted by a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was

predicated. We are proposing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: We must receive comments on this proposed AD by August 22, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: 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 service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this 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., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21779; the directorate identifier for this docket is 2002–NM–349–AD.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can 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 DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On June 12, 1996, we issued AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996), for all McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (Military) series airplanes. (Since the issuance of that AD, the FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.) That AD requires implementation of a program of structural inspections to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. That AD also requires, among other things, revision of the existing program to require additional visual inspections of additional structure. That AD was prompted by data submitted by the manufacturer indicating that certain revisions to the program were necessary in order to increase the confidence level of the statistical program to ensure timely detection of cracks in various airplane structures. We issued that AD to prevent fatigue cracking that could compromise the structural integrity of those airplanes.

Supplemental Inspection Documents (SIDs) ADs

In the early 1980's, as part of our continuing work to maintain the structural integrity of older transport category airplanes, we concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service goal (DSG). A significant number of these airplanes were approaching or had exceeded the DSG on which the initial type certification approval was predicated. In light of this, and as a result of increased utilization, longer operational lives, and the high levels of safety expected of the currently operated transport category airplanes, we determined that a supplemental structural inspection program (SSIP) was necessary to ensure a high level of structural integrity for all airplanes in the transport fleet.

Issuance of Advisory Circular

As a follow-on from that determination, we issued Advisory Circular (AC) No. 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," dated May 6, 1981. That AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to transport airplanes that were certified under the fail-safe requirements of part 4b ("Airplane Airworthiness, Transport Categories") of the Civil Air Regulations of the Federal Aviation Regulations (FAR) (14 CFR part 25), and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in that AC are applicable to transport category airplanes operated under subpart D ("Special Flight Operations") of part 91 of the FAR (14 CFR part 91); part 121 ("Operating Requirements: Domestic, Flag, and Supplemental Operations"); part 125 ("Certification and Operations: Airplanes having a Seating Capacity of 20 or More Passengers or a Maximum Payload of 6,000 Pounds or More"); and part 135 ("Operating Requirements: Commuter and On-Demand Operations") of the FAR (14 CFR parts 121, 125, and 135). The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

Aging Aircraft Safety Act (AASA)

In October 1991, Congress enacted Title IV of Public Law 102–143, the AASA of 1991, to address aging aircraft concerns. That Act instructed the FAA administrator to prescribe regulations

that will ensure the continuing airworthiness of aging aircraft.

SSID Team

In April 2000 the Transport Airplane Directorate (TAD) chartered a SSID Team to develop recommendations to standardize the SID/SSID ADs regarding the treatment of repairs, alterations, and modifications (RAMs). The report can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm.*

FAA Responses to AASA

In addition to the SSID Team activity, there are other on-going activities associated with FAA's Aging Aircraft Program. This includes, among other initiatives, our responses to the AASA.

On January 25, 2005, as one of the responses to the AASA, we issued the Aging Airplane Safety; Final Rule (AASFR) (70 FR 5518, February 2, 2005). The AASFR revised the interim final rule that was published on December 6, 2002 (67 FR 72726, December 6, 2002) and revised by technical amendment (68 FR 69307, December 12, 2004). The AASFR applies to certain transport category, turbine powered airplanes with a type certificate issued after January 1, 1958 (including the airplanes that would be subject to this AD) that are operated under 14 CFR parts 121 or 129, with the exception of airplanes operated within the State of Alaska. Sections 121.370a and 129.16 of the AASFR require the maintenance programs of those airplanes to include damage tolerance-based inspections and procedures for structure that is susceptible to fatigue cracking that could contribute to a catastrophic failure. The inspections and procedures must take into account the adverse affects that repairs, alterations, and modifications may have on fatigue cracking and the inspection of the structure. The procedures are to be established and incorporated before December 20, 2010. Compliance with this proposed AD would also be compliance with some aspects of the AASFR.

Public Technical Meeting

The TAD also held a public meeting regarding standardization of the FAA approach to RAMs in SID/SSID ADs on February 27, 2003, in Seattle, Washington. We presented our views and heard comments from the public concerning issues regarding the standardization of the requirements of ADs for certain transport category airplanes that mandate SSIDs, and that address the treatment of RAMs for those certain transport category airplanes. Our presentation included a plan for the standardization of SID/SSID ADs, the results of the SSID Team findings, and the TAD vision of how SID/SSID ADs may support compliance to the AASIFR. We also asked for input from operators on the issues addressing RAMs in SID/SSID ADs. One of the major comments presented at the public meeting was that operators do not have the capability to accomplish the damage tolerance assessments, and they will have to rely on the manufacturers to perform those assessments. Furthermore, the operators believe that the timeframes to accomplish the damage tolerance assessments will not permit manufacturers to support the operators. Another major comment presented was from the Airworthiness Assurance Working Group (AAWG) of the Aviation Rulemaking Advisory Committee (ARAC). The AAWG requested that we withdraw the damage tolerance requirements from the final rule and task AAWG to develop a new RAM damage tolerance based program with timelines to be developed by ARAC. The public meeting presentations can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm.*

Relevant Service Information

We have reviewed Boeing Report No. L26–008, "DC–9 All Series Supplemental Inspection Document (SID), Volume 1, Revision 6, dated November 2002. The purpose of Boeing Report No. L26–008 is to define the mandatory inspection requirements for the Principal Structural Elements (PSEs) and to provide specific non-destructive inspection (NDI) techniques and procedures for each PSE. Revision 6 also revises the maintenance program by removing provisions for the sampling inspection program. However, Revision 6 retains the program goal to inspect airplanes in advance of a certain threshold for the possibility of increasing that threshold and using service history to justify delaying inspections on the younger portion of the fleet. As with previous revisions, Revision 6 provides credit for inspections previously accomplished within the required intervals. The SID provides a description of PSEs, NDI locations, planning and reporting procedures and certain criteria upon which the supplemental inspection program is based.

We have also reviewed Boeing Report No. L26–008, "DC–9 Series 10/20 Supplemental Inspection Document (SID), Volume II—10/20, Revision 6, dated November 2004;" "DC–9 Series 20/30 Supplemental Inspection Document (SID), Volume II—20/30, Revision 7, dated November 2004;" "DC–9 Series 40 Supplemental Inspection Document (SID, Volume II—40, Revision 6, dated November 2004;" and "DC–9 Series 50 Supplemental Inspection Document (SID), Volume II—50, Revision 6, dated November 2004." Those Volume II documents describe specific non-destructive testing inspections of the SID, and have been approved as an acceptable alternative method of compliance with corresponding paragraphs of AD 96–13–03.

Accomplishing the actions specified in the service information described above is intended to adequately address the unsafe condition.

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. This proposed AD would retain the requirements of AD 96–13–03. This proposed AD also would continue to require revision of the FAA-approved maintenance program. This proposed AD would require implementation of a structural inspection program of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of airplanes as they approach the manufacturer's original fatigue design life goal. For the purposes of this proposed AD, a PSE is defined as an element that contributes significantly to the carrying of flight, ground or pressurization loads, and the integrity of that element is essential in maintaining the overall structural integrity of the airplane.

Editorial Clarifications

Paragraph (b) of AD 96–13–03 (which is renumbered as paragraph (f) of this AD) requires, among other things, that the maintenance program be revised to include the inspection threshold and repetitive inspections (planning data) defined in Section 2 of Volume III–95 of the SID. Paragraph (b)(3) of AD 96–13–03 (renumbered as paragraph (f)(3) of this AD) also requires inspection results to be reported in accordance with Section 2 of Volume III–95. Those planning and data reporting requirements are now contained in Section 4 of Volume 1, Revision 6, dated November 2002. Therefore, this proposed AD would require use of the information in Section 4 of Volume 1, Revision 6, and reference to Volume III has been removed in the new requirements of this proposed AD.

The following paragraphs summarize certain specific actions proposed in this AD.

Revision of the Maintenance Program

Paragraph (h) of the proposed AD would require a revision of the maintenance inspection program that provides for inspection(s) of the PSE per Boeing Report No. L26–008, "DC–9 All Series, Supplemental Inspection Document (SID)," Volume 1, Revision 6, dated November 2002. PSEs are also defined and specified in the SID. Unless otherwise specified, references in this proposed AD to the "SID" are to Revision 6, dated November 2002.

Non-Destructive Inspections (NDI)

Paragraph (i) of the proposed AD would specify that the SID be implemented on a PSE-by-PSE basis before structure exceeds its 75% fatigue life threshold ($\frac{3}{4}N_{th}$), and its full fatigue life threshold (N_{th}). The threshold value is defined as the life of the structure measured in total landings, when the probability of failure reaches one in a billion. The DC–9 All Series SID program is not a sampling program. Airplanes would be inspected once prior to reaching both PSE thresholds (once by $\frac{3}{4}N_{th}$ and once by N_{th}). In order for the inspection to have value, no PSE would be inspected prior to half of the fatigue life threshold, $\frac{1}{2}N_{th}$. The additional $\frac{3}{4}N_{th}$ threshold aids in advancing the threshold for some PSEs as explained in Section 4 of Volume I of the SID. Inspection of each PSE should be accomplished in accordance with the NDI procedures set forth in Volume II of the SID.

For airplanes past the threshold N_{th}, the proposed AD would require that the PSE be inspected at repetitive intervals not to exceed $\Delta NDI/2$ as specified in Section 4 of Volume I of the SID per the NDI procedure, which is specified in Volume II of the SID. The definition of $\Delta NDI/2$ is half of the life for a crack to grow from a given NDI detectable crack size to instability.

Paragraph (i) of this proposed AD also would require, for airplanes that have exceeded the N_{th}, that each PSE be inspected within 18 months after the effective date of this AD. The entire PSE must be inspected regardless of whether or not it has been repaired, altered, or modified.

Certain Acceptable Methods of Compliance

Paragraph (j) of this proposed AD specifies certain revision levels of Volume II of the SID that provide acceptable methods of compliance with the requirements of paragraph (j) of this proposed AD.

Discrepant Findings

Paragraph (k) of this proposed AD would require that, if any PSE is repaired, altered, or modified, it must be considered a "discrepant finding." A discrepant PSE indicates that it could not be completely inspected because the NDI procedure could not be accomplished due to differences on the airplane from the NDI reference standard (*i.e.*, RAMs). For any discrepancy (*e.g.*, a PSE cannot be inspected as specified in Volume II of the SID or does not match rework, repair, or modification description in Volume I of the SID), this proposed AD would require that the discrepancy be inspected in accordance with a method approved by the FAA.

Reporting Requirements

Paragraph (l) of this proposed AD would require that all negative, positive, or discrepant findings of the inspection accomplished in paragraph (i) of the AD be reported to Boeing at the times specified, and in instructions contained in Section 4 of Volume 1 of the SID.

Corrective Action

Paragraph (m) of this proposed AD would require that any cracked structure detected during any inspection required per paragraph (i) of this AD be repaired before further flight. Additionally, paragraph (m) of this AD would require accomplishment of follow-on actions as specified in paragraphs (m)(1), (m)(2), and (m)(3) of this proposed AD, at the times specified below.

1. Within 18 months after repair, accomplish a Damage Tolerance Assessment (DTA) that defines the threshold for inspection and submit the assessment for approval to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

2. Prior to reaching 75% of the threshold, submit the inspection methods and repetitive inspections intervals for the repair for approval by the Manager of the Los Angeles ACO.

3. Prior to the threshold, the inspection method and repetitive inspection intervals are to be incorporated into the FAA-approved structural maintenance or inspection program for the airplane.

For the purposes of this proposed AD, the FAA anticipates that submissions of the DTA of the repair, if acceptable, should be approved within six months after submission.

Transferability of Airplanes

Paragraph (n) of this proposed AD specifies the requirements of the inspection program for transferred airplanes. Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this proposed AD must be established. Paragraph (n) of the proposed AD would require accomplishment of the following:

1. For airplanes that have been inspected per this proposed AD, the inspection of each PSE must be accomplished by the new operator per the previous operator's schedule and inspection method, or per the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

2. For airplanes that have not been inspected per this proposed AD, the inspection of each PSE must be accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the FAA. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Accomplishment of these actions will ensure that: (1) An operator's newly acquired airplanes comply with its SSIP before being operated; and (2) frequently transferred airplanes are not permitted to operate without accomplishment of the inspections defined in the SSID.

Inspections Accomplished Before the Effective Date of this AD

Paragraph (o) of this proposed AD merely provides approval of Boeing Report No. L26–008, "DC–9 All Series Supplemental Inspection Document (SID)," Volume I, Revision 6, dated November 2002; as acceptable for compliance with the requirements of paragraph (i) of this proposed AD for inspections accomplished before the effective date of the proposed AD.

Acceptable for Compliance

Paragraph (p) of this proposed AD also provides approval of McDonnell Douglas Report No. MDC91K0263, "DC–9/MD–80 Aging Aircraft Repair Assessment Program Document," Revision 1, dated October 2000 as an acceptable means of compliance with the requirements of paragraphs (i) and (m) of this proposed AD for repairs and

inspection/replacement for certain repairs to the fuselage pressure shell accomplished prior to the effective date of the proposed AD.

Change to Existing AD

This proposed AD would retain the requirements of AD 96–13–03. Since AD 96–13–03 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 96–13–03	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).

Other Editorial Changes

The "tables" specified in the regulatory text of this proposed rule, including the tables restated from AD 96–13–03, have been numbered for easy reference.

Interim Action

This is considered to be interim action. We are currently considering requiring damage tolerance-based inspections and procedures that include all major structural RAMs, which may result in additional rulemaking. That rulemaking may include appropriate recommendations from the previously mentioned FAA team and a public meeting on how to address RAMs.

Costs of Compliance

There are about 710 McDonnell Douglas transport category airplanes worldwide of the affected design. This proposed AD would affect about 477 airplanes of U.S. registry, or 26 U.S. airline operators.

The recurring inspection costs, as required by AD–96–13–03, take 362 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $11,223,810, or $23,530 per airplane, per inspection cycle.

The incorporation of the revised procedures in this AD action will require approximately 20 additional work hours per operator to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost to the 26 affected U.S. operators to incorporate these revised procedures into the SID program is estimated to be $33,800, or $1,300, per operator.

Additionally, the number of required work hours for each proposed inspection (and the SID program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidently or in combination with normally scheduled airplane inspections and other maintenance program tasks. Further, any costs associated with special airplane scheduling are expected to be minimal.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. 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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–9671 (61 FR 31009, June 19, 1996) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by August 22, 2005.

Affected ADs

(b) This AD supersedes AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996).

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34; DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; and DC–9–51 airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

Compliance

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

Requirements of AD 96–13–03

Revision of the FAA-Approved Maintenance Inspection Program

(f) Within 6 months after July 24, 1996 (the effective date of AD 96–13–03, amendment 39–9671), replace the FAA-approved maintenance inspection program with a revision that provides for inspection(s) of the principal structural elements (PSEs) defined in McDonnell Douglas Report No. L26–008,

"DC–9 Supplemental Inspection Document (SID)," Section 2 of Volume I of McDonnell Douglas Report No. L26–008, "DC–9 Supplemental Inspection Document (SID)," Revision 4, dated July 1993, in accordance with Section 2 of Volume III–95, dated September 1995, of the SID.

Note 1: Operators should note that certain visual inspections of FLOS PSE's that were previously specified in earlier revisions of Volume III of the SID are no longer specified in Volume III–95 of the SID.

(1) Prior to reaching the threshold (N_{th}), but no earlier than one-half of the threshold ($\frac{1}{2}N_{th}$), specified for all PSE's listed in Volume III–95, dated September 1995, of the SID, inspect each PSE sample in accordance with the non-destructive inspection (NDI) procedures set forth in Section 2 of Volume II, dated July 1993. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2 of the NDI procedure that is specified in Volume III–95, dated September 1995, of the SID.

(2) The NDI techniques set forth in Section 2 of Volume II, dated July 1993, of the SID provide acceptable methods for accomplishing the inspections required by this paragraph.

(3) All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions contained in Section 2 of Volume III–95, dated September 1995, of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 2: Volume II of the SID, dated July 1993, is comprised of the following:

TABLE 1

Volume designation	Revision level shown on volume
Volume II–10/20	4
Volume II–20/30	5
Volume II–40	4
Volume II–50	4

Note 3: NDI inspections accomplished in accordance with the following Volume II of the SID provide acceptable methods for accomplishing the inspections required by this paragraph:

TABLE 2

Volume designation	Revision level	Date of revision
Volume II–10/20	4	July 1993.
Volume II–10–20	3	April 1991.
Volume II–10/20	2	April 1990.
Volume II–10/20	1	June 1989.
Volume II–20	Original	Nov. 1987.
Volume II–20/30	5	July 1993.
Volume II–20/30	4	April 1991.
Volume II–20/30	3	April 1990.
Volume II–20/30	2	June 1989.
Volume II–20/30	1	Nov. 1987.
Volume II–40	4	July 1993.
Volume II–40	3	April 1991.
Volume II–40	2	April 1990.
Volume II–40	1	June 1989.
Volume II–40	Original	Nov. 1987.
Volume II–50	4	July 1993.
Volume II–50	3	April 1991.
Volume II–50	2	April 1990.
Volume II–50	1	June 1989.
Volume II–50	Original	Nov. 1987.

(g) Any cracked structure detected during the inspections required by paragraph (f) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 4: Requests for approval of any PSE repair that would affect the FAA-approved maintenance inspection program that is required by this AD should include a damage tolerance assessment for that PSE.

New Requirements of This AD

Revision of the Maintenance Inspection Program

(h) Within 12 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection(s) of the PSEs, in accordance with Boeing Report No. L26–008, "DC–9 All Series, Supplemental Inspection Document (SID)," Volume I, Revision 6, dated November 2002." Unless otherwise specified, all further references in this AD to the "SID" are to Revision 6, dated November 2002.

Non-Destructive Inspections (NDIs)

(i) For all PSEs listed in Section 2 of Volume I of the SID, perform an NDI for fatigue cracking of each PSE in accordance with the NDI procedures specified in Section 2 of Volume II, dated November 2004 of the SID, at the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) For airplanes that have less than three quarters of the fatigue life threshold ($\frac{3}{4}N_{th}$) as of the effective date of the AD: Perform an NDI for fatigue cracking no earlier than one-half of the threshold ($\frac{1}{2}N_{th}$) but prior to reaching three-quarters of the threshold ($\frac{3}{4}N_{th}$, or within 60 months after the effective date of this AD, whichever occurs later. Inspect again prior to reaching the threshold (N_{th}) or ΔNDI/2, whichever occurs later, but no earlier than ($\frac{3}{4}N_{th}$). Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(2) For airplanes that have reached or exceeded three-quarters of the fatigue life threshold ($\frac{3}{4}N_{th}$), but less than the threshold (N_{th}), as of the effective date of the AD: Perform an NDI prior to reaching the threshold (N_{th}), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(3) For airplanes that have reached or exceeded the fatigue life threshold (N_{th}) as of the effective date of the AD: Perform an NDI within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

Note 5: Volume II of the SID, dated November 2004 is comprised of the following:

TABLE 3

Volume designation	Revision level shown on volume
Volume II–10/20	6
Volume II–20/30	7
Volume II–40	6
Volume II–50	6

Acceptable Methods of Compliance With Paragraph (j) of This AD

(j) The following revision levels of Volume II of the SID provide acceptable methods of compliance with the inspections required by paragraph (i) of this AD.

TABLE 4

Volume designation	Revision level	Date of revision
Volume II–10/20	6	Nov. 2004.
Volume II–10/20	5	July 1997.
Volume II–10/20	4	July 1993.
Volume II–10/20	3	April 1991.
Volume II–10/20	2	April 1990.
Volume II–10/20	1	June 1989.
Volume II–20	Original	Nov. 1987.
Volume II–20/30	7	Nov. 2004.
Volume II–20/30	6	July 1997.
Volume II–20/30	5	July 1993.
Volume II–20/30	4	April 1991.
Volume II–20/30	3	April 1990.
Volume II–20/30	2	June 1989.
Volume II–20/30	1	Nov. 1987.
Volume II–40	6	Nov. 2004
Volume II–40	5	July 1997.
Volume II–40	4	July 1993.
Volume II–40	3	April 1991.
Volume II–40	2	April 1990.
Volume II–40	1	June 1989.
Volume II–40	Original	Nov. 1987.
Volume II–50	6	Nov. 2004.
Volume II–50	5	July 1997.
Volume II–50	4	July 1993.
Volume II–50	3	April 1991.
Volume II–50	2	April 1990.
Volume II–50	1	June 1989.
Volume II–50	Original	Nov. 1987.

Discrepant Findings

(k) If any discrepancy (*e.g.*, a PSE cannot be inspected as specified in Volume II of the SID or does not match rework, repair, or modification description in Volume I of the SID) is detected during any inspection required by paragraph (i) of this AD, accomplish the action specified in paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) If a discrepancy is detected during any inspection performed prior to $\frac{3}{4}N_{th}$ or N_{th}: The area of the PSE affected by the

discrepancy must be inspected prior to N_{th} or within 18 months of the discovery of the discrepancy, whichever is later, per a method approved by the Manager, Los Angeles ACO, FAA.

(2) If a discrepancy is detected during any inspection performed after N_{th}: The area of the PSE affected by the discrepancy must be inspected prior to the accumulation of an additional ΔNDI/2, measured from the last non-discrepant inspection finding, or within 18 months of the discovery of the discrepancy, whichever occurs later, per a method approved by the Manager of the Los Angeles ACO.

Reporting Requirements

(l) All negative, positive, or discrepant (discrepant finding examples are described in paragraph (k) of this AD) findings of the inspections accomplished under paragraph (i) of this AD must be reported to Boeing, at the times specified in, and in accordance with the instructions contained in, Section 4 of Volume I of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Corrective Actions

(m) Any cracked structure of a PSE detected during any inspection required by paragraph (j) of this AD must be repaired before further flight in accordance with a method approved by the Manager, Los Angeles ACO or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles Aircraft Certification Office (ACO), to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD. Accomplish follow-on actions described in paragraphs (m)(1), (m)(2), and (m)(3) of this AD, at the times specified.

(1) Within 18 months after repair, perform a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval.

(2) Before reaching 75% of the repair threshold as determined in paragraph (m)(1) of this AD, submit the inspection methods and repetitive inspection intervals for the repair for approval.

(3) Before the repair threshold, as determined in paragraph (m)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

Note 6: For the purposes of this AD, we anticipate that submissions of the DTA of the repair, if acceptable, should be approved within six months after submission.

Note 7: Advisory Circular AC 25.1529–1, "Instructions for Continued Airworthiness of Structural Repairs on Transport Airplanes," dated August 1, 1991, is considered to be additional guidance concerning the approval of repairs to PSEs.

Inspection for Transferred Airplanes

(n) Before any airplane that has exceeded the fatigue life threshold (N_{th}) can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established per paragraph (n)(1) or (n)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each PSE must be accomplished by the new operator per the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that PSE inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each PSE required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the Manager, Los Angeles ACO. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Inspections Accomplished Before the Effective Date of This AD

(o) Inspections accomplished prior to the effective date of this AD per Boeing Report No. L26–008, "DC–9 All Series Supplemental Inspection Document (SID)," Volume I, Revision 6, dated November 2002 are acceptable for compliance with the requirements of paragraph (i) of this AD.

Acceptable for Compliance

(p) McDonnell Douglas Report No. MDC91K0263, "DC–9/MD–80 Aging Aircraft Repair Assessment Program Document," Revision 1, dated October 2000, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. These repairs and inspection/replacement programs are considered acceptable for compliance with the requirements of paragraphs (i) and (m) of this AD for repairs subject to that document.

Alternative Methods of Compliance (AMOCs)

(q) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(r) AMOCs approved previously for alternative inspection procedures per AD 87–14–07 R1, amendment 39–6019; AD 94–03–01, amendment 39–8807; and AD 96–13–03, amendment 39–9671; are acceptable for compliance with the actions required by paragraph (i) of this AD for inspections accomplished before the effective date of this AD.

(s) AMOCs approved previously for repairs per AD 87–14–07 R1, amendment 39–6019; AD 94–03–01, amendment 39–8807; and AD 96–13–03, amendment 39–9671; are acceptable for compliance with the requirements of paragraph (m) of this AD.

Issued in Renton, Washington, on June 28, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–13436 Filed 7–7–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2004–0238; FRL–7935–5]

RIN 2060–AM16

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: This action is a supplemental notice of proposed rulemaking to our February 6, 1998 (63 FR 6288) proposed national emissions standards for hazardous air pollutants (NESHAP) to limit emissions of hazardous air pollutants (HAP) from oil and natural gas production facilities that are area sources. The final NESHAP for major sources was promulgated on June 17, 1999 (64 FR 32610), but final action with respect to area sources was deferred. This action proposes changes to the 1998 proposed rule for area sources, proposes alternative applicability criteria and reopens the public comment period to solicit comment on the changes proposed today. The proposal also includes the addition of ASTM D6420–99 as an alternative test method to EPA Method 18. Oil and natural gas production is included as an area source category for regulation under the Urban Air Toxics Strategy (Strategy)(64 FR 38706, July 19, 1999). As explained below, we included oil and natural gas production facilities in the Strategy because of benzene emissions from triethylene glycol (TEG) dehydration units located at such facilities.

DATES: Comments must be received on or before September 6, 2005.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. OAR–2004–0238, by one of the following methods:

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

- *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, U.S. Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC, 20503.
- *Hand Delivery:* U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B102, Washington, DC, 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions. Direct your comments to Docket ID No. OAR–2004–0238. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* 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 Federal regulations.gov Web sites are "anonymous access" systems, 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 EDOCKET 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).

Docket. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* 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 information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Nizich, Office of Air Quality Planning and Standards, Emission Standards Division (C439–03), EPA, Research Triangle Park, NC 27711; telephone number: 919–541–3078; fax number: 919–541–3207; electronic mail address: *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: *Entities Table.* Entities potentially affected by this proposed action include, but are not limited to, the following:

Category	NAICS Code [1]	Examples of regulated entities
Industry	211111, 211112	Condensate tank batteries, glycol dehydration units, and natural gas processing plants.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR part 63, subpart HH-National Emissions Standards for Hazardous Air Pollutants: Oil and Natural Gas Production Facilities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web. In addition to being available in the docket, an electronic copy of the proposed rule is also available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by July 28, 2005, a public hearing will be held on August 8, 2005. If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby. Contact Mr. Greg Nizich at 919–541–3078 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location.

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

I. Background

We proposed NESHAP for the Oil and Natural Gas Production source category on February 6, 1998 (63 FR 6288) that addressed both major and area sources of oil and natural gas production facilities. Area sources of HAP are those stationary sources that emit or have the potential to emit, considering controls, less than 10 tons per year of any one HAP and less than 25 tons per year of any combination of HAP. The 1998 proposed area source rule was based on a proposed finding of adverse human health effects from benzene emissions from triethylene glycol (TEG) dehydration units at area source oil and natural gas production facilities.[1] Based on this finding, referred to as an area source finding, we proposed to amend the source category list to add oil and natural gas production to the list of area source categories established under section 112(c)(1) of the Clean Air Act (CAA). In June 1999, we took final action on the major source standards but deferred action on the TEG dehydration units at oil and natural production area source facilities and on listing the area source category pending issuance of the Strategy.

The Strategy was issued on July 19, 1999 (64 FR 38706) and addressed section 112(c)(3) and 112(k)(3)(B)(ii) of the CAA that instruct us to identify not less than 30 HAP which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories or subcategories to ensure that emissions representing 90 percent of the 30 listed HAP are subject to regulation. The Strategy included a list of 33 HAP judged to pose the greatest potential threat to public health in the largest number of urban areas (the urban HAP) and a list of area source categories emitting 30 of the listed HAP (area source HAP). Once listed, these area source categories shall be subject to standards under section 112(d) of the CAA. The proposed standards that are the subject of today's action are based on generally available control technology (GACT) pursuant to section 112(d)(5) of the CAA.

Benzene was one of the HAP listed under the Strategy. Oil and natural gas production facilities were listed in the Strategy solely because the TEG dehydration units located at these facilities contributed approximately 47 percent of the national urban emissions of benzene from stationary sources at area sources. As the result of the emission standards development process, we recognize that our description of the source category in the Strategy is overbroad. The listing should read TEG dehydration units at oil and natural gas production facilities. This clarification to the scope of the source category is consistent with the Agency's proposed 1998 finding and the record supporting both the 1998 finding and the 1999 listing in the Strategy.

Today, we are proposing the addition of regulatory language to 40 CFR part 63, subpart HH, to address area sources and fulfill a portion of our obligation under section 112(c)(3) to regulate stationary sources of benzene. Even though we had previously included area source requirements as part of the 1998 subpart HH proposal, at this time, we are proposing some changes to the previously proposed standards in response to the comments we received on the 1998 proposal. In addition, we are proposing another geographical applicability option as an alternative to the previously proposed criteria. We are seeking comment on these proposed changes. Most importantly, we are seeking comments on both applicability options that are under consideration.

An applicability option under consideration was first described in the 1998 proposed rule. Specifically, we proposed that the area source standards would apply only to TEG dehydration units at area source oil and natural gas production facilities located in an urban county rather than a rural county using Urban-1 and Urban-2[2] classifications that we defined based on information from the U.S. Census Bureau (64 FR 6293). (Note: Urban-2 counties in the 1998 proposed rule were incorrectly defined. In that notice, we incorrectly stated that Urban-2 counties were defined by criteria used by the U.S. Census Bureau to define urbanized areas, which are not county-based areas. The actual parameters for Urban-2 that we used for determining urban HAP under the Strategy, as well as for the 1998 and today's proposed standards for TEG units at area source oil and natural gas production facilities, are provided in footnote 2 of today's notice.) Under this proposed geographical applicability criterion described in footnote 2, those area source TEG dehydration units located in counties classified as urban areas would be subject to the rule.

In today's notice, we are proposing a second, alternative applicability approach for purposes of the proposed rule. Under that alternative option, the final rule would apply to all TEG dehydrators at area source oil and natural gas production facilities.

We are seeking comment on both of these proposed applicability options. We are not requesting comment on any aspect of subpart HH as it applies to major sources. We issued the final rule for major sources in 1999, and that rule is not part of today's proposal. We are today, however, proposing to add ASTM D6420–99(2004) as an alternative to EPA Method 18 for both major and area sources, and we seek comment on this particular proposed regulatory change, as it affects both major and area sources.

II. Summary of Proposed Rule for Area Sources

The 1998 proposal described the area source requirements as largely identical to the major source requirements, except for the addition of geographic applicability criteria, the fact that only the TEG dehydration unit would be an affected source covered by the emission reduction standards at area sources, and some reduced reporting requirements. Except as described below, we have not changed these requirements with today's supplemental notice.

As in the 1998 proposed rule (63 FR 6290), the standards proposed today are based on GACT which would require owners or operators of TEG dehydration units at area sources to connect, through a closed-vent system, each process vent on the TEG dehydration unit to an emission control system. The control system must reduce emissions either: (1) By 95.0 percent or more of HAP

[1] The proposed finding evaluated HAP from TEG units, but the only HAP identified in the Strategy that is emitted from TEG units is benzene.

[2] Urban-1 and Urban-2 are defined based on the U.S. Census Bureau's most current decennial census data. Urban-1 counties consist of counties with metropolitan statistical areas (MSA) with a population greater than 250,000. Urban-2 counties are defined as all other counties where more than 50 percent of the population is designated urban by the U.S. Census Bureau. For purposes of this preamble, we refer to those counties that qualify as Urban-1 and Urban-2 as "urban" counties. Rural counties are those counties that do not meet the criteria of Urban-1 or Urban-2. A list of the urban and rural counties based on the 1990 census classifications can be found online at *http://www.epa.gov/ttnatw01/urban/112kfac.html*. A list of the urban and rural counties based on the 1990 and 2000 census classifications can be found online at *http://www.epa.gov/ttn/atw/oilgas/oilgaspg.html* and in the Docket.

(generally a condenser with a flash tank), or (2) to an outlet concentration of 20 parts per million by volume (ppmv) or less (for combustion devices), or (3) to a benzene emission level of less than 0.90 Megagrams per year (Mg/yr) (1.0 tons per year(tpy)). Sources whose actual annual average flowrate of natural gas to the TEG dehydration unit is less than 85 thousand standard cubic meters per day (thousand m^3/day) (3 million standard cubic feet per day (MMSCFD)), or sources whose actual average emissions of benzene from the TEG dehydration unit process vent to the atmosphere are less than 0.90 Mg/yr (1 tpy), as determined by the procedures specified in 40 CFR 63.772(b)(1) and (2), would not have any control requirements.

We believe these cutoffs are appropriate due to similarities between TEG units at area sources and those at major sources. Based on the available data for TEG units at major sources in 1998, we were not able to determine any level of emission control below the 85 thousand m^3/day and 0.90 Mg/yr cutoff levels at major sources. Because our assessment of the cutoff levels for TEG units at major sources has not changed since 1998, and because we have no information suggesting any difference between major and area sources in the basis for controlling TEG units, we do not believe that we would be able to determine any level of emission control for TEG units below the cutoff levels at area sources either. In addition, we compared the cost of control per unit of HAP removed when controlling all units, against such cost when controlling only units with benzene emissions of 1 tpy or greater. We also evaluated the projected impacts and costs associated with four different levels of natural gas throughput (see 63 FR 6288 and 6299). Based on these assessments, we believe that the cost burden to the affected sources below these cutoff levels would be too high for the amount of emission reduction these sources would achieve with the proposed controls.

We note that for the reasons described above, we are proposing in this action to subcategorize those TEG dehydration units that are subject to the final rule based on whether the unit has an annual average flowrate of natural gas less than 85 thousand m^3/day (3 MMSCFD), or actual annual average benzene emissions from the TEG dehydration unit process vent to the atmosphere less than 0.90 MG/yr (1 tpy). We are further proposing that GACT for sources that meet the cutoffs described above is no control. We specifically seek comment on our proposed subcategorization approach (including the specific values for the cutoffs) and whether to proceed with subcategorization in this rule. Pursuant to section 112(d), EPA also has authority to "distinguish among classes, types, and sizes of sources within a category or subcategory in establishing * * * (emission) standards." CAA section 112(d)(1).

As an alternative to complying with the control requirements mentioned above, pollution prevention measures, such as process modifications or combinations of process modifications and one or more control device that reduce the amount of HAP emissions generated, are allowed provided they achieve the required emissions reductions.

Similarly, area sources would be subject to the same initial and continuing compliance requirements as major sources except that area sources would be required to submit periodic reports annually, instead of semiannually as is required for major sources. That is, affected sources must submit Notification of Compliance Status Reports annually, inspect/test the closed-vent system and control device(s), and establish monitoring parameter values. Continuing compliance requirements include submitting Periodic Reports, conducting annual inspections of closed-vent systems, repairing leaks and defects, conducting the required monitoring, and maintaining required records.

As the result of comments received on the 1998 proposal on the level of the standards and how it is to be demonstrated, the final major source rule addressed the need for an averaging period to accommodate fluctuations in condenser efficiency due to changes in ambient temperature. We also clarified in that final rule that owners or operators could be allowed to achieve a 95 percent emission reduction using process modifications or combinations of process modifications and one or more control device. These changes are not dependent on the amount of emissions at the facility, but rather address practical considerations in complying with the control standards, which are the same for both major and area sources. Therefore, as indicated in today's proposal, we propose that these provisions also apply to area sources.

Today's supplemental notice presents compliance dates for existing area sources and new or reconstructed area sources for the two proposed applicability options noted above and described in greater detail below. For purposes of establishing compliance dates, it should be noted that the 1998 proposal applied only to TEG dehydrators located in urban areas, which are counties designated as Urban-1 and Urban-2 (see supra note 2). The tables that follow present compliance dates for the two alternative geographic applicability options that we are proposing. Under Option 1 all TEG dehydration units at area source oil and natural gas production facilities would be subject to the final rule. Under Option 2, the option we proposed in 1998, only those TEG units located in counties that satisfy the Urban-1 or Urban-2 county criteria, as described herein, would be subject to the requirements of the final rule.

Table 1 of this preamble presents compliance dates for Option 1.

TABLE 1.—COMPLIANCE DATES FOR EXISTING AND NEW SOURCES FOR APPLICABILITY OPTION 1

For an affected area source located in a county we classified as . . .	Where the source was constructed/reconstructed . . .	Then the source is . . .	And the compliance date for that source would be . . .
(a) urban based on 2000 census data.	before February 6, 1998.	existing	3 years after the effective date of the area source standards.
(b) urban based on 2000 census data.	on or after February 6, 1998.	new	the effective date of the area source standards or startup, whichever is later.
(c) rural based on 2000 census data.	before today's supplemental proposal.	existing	3 years after the effective date of the area source standards.

TABLE 1.—COMPLIANCE DATES FOR EXISTING AND NEW SOURCES FOR APPLICABILITY OPTION 1—Continued

For an affected area source located in a county we classified as . . .	Where the source was constructed/reconstructed . . .	Then the source is . . .	And the compliance date for that source would be . . .
(d) rural based on 2000 census data.	on or after today's supplemental proposal.	new	the effective date of the area source standards or startup, whichever is later.

With respect to item (b) in Table 1 above, we solicit comment on the proposed compliance date for those sources located in counties that were rural in 1990 and became urban as a result of the 2000 decennial census. Specifically, we solicit comment on whether the sources affected under item (b) should be considered new or existing, and what the appropriate trigger date should be for defining new source status. We further solicit comment on the compliance deadlines for these sources.

The list of urban (*i.e.*, Urban-1 and Urban-2) and rural counties based on 1990 U.S. Census Bureau data can be found at *http://www.epa.gov/ttnatw01/urban/112kfac.html*). This list can also be found in the docket, along with the list of urban counties based on 2000 U.S. Census Bureau data (Docket No. OAR–2004–0238). These two lists can also be found at the following url as well: *http://www.epa.gov/ttn/atw/oilgas/oilgaspg.html*.

For Option 2, existing sources (*i.e.*, affected sources constructed before the 1998 proposal) must achieve compliance within 3 years after the effective date of the final rule, and new sources (affected sources constructed on or after the 1998 proposal) must comply on the effective date of the final rule, or startup, whichever date is later. Sources that are located in a county that meets the definition of rural are not subject to the requirements of the rule under Option 2.

We recognize that where a source is constructed in a county that is initially classified as rural and subsequently reclassified as urban, the reclassification may occur after the source's startup date or the effective date of the final rule, such that it is impossible for the source to meet the relevant compliance deadline described above. To account for changes in urban/rural status that will likely occur with each decennial census, EPA intends, after the issuance of the decennial census data, to publish in the **Federal Register** an updated list of counties that qualify as urban based on the most recent decennial data.

For any new source (*i.e.*, affected sources constructed on or after the 1998 proposal) located in a county where the classification of that county changes from rural to urban based on 2010 or a later decennial census, we are proposing that the compliance deadline for such source be the date EPA publishes the updated list of urban counties in the **Federal Register**. We request comment on whether this compliance deadline is appropriate. For existing sources (*i.e.*, affected sources constructed before the 1998 proposal) located in a county that is redesignated as urban based on 2010 or later census data, we propose that the compliance date for such sources be three years after the publication of the updated list of counties in the **Federal Register**. As noted above, we also solicit comment on how to treat new sources that were rural in 1990 and became urban based on the 2000 decennial census data and what the compliance date for such sources should be.

In the 1998 proposal, we proposed that area sources would be exempt from title V permitting requirements (63 FR 6307). We do not believe that the proposed applicability approaches described in today's notice alter the basis for the proposed title V permit exemption. Neither the scope of geographical applicability nor the number of sources impacted by the options change the degree to which the standards are implementable outside of a permit, and we, therefore, maintain our belief that the permit would provide minimal additional benefit. Therefore, we propose to maintain the exemption.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category?

We listed area source oil and natural gas production facilities in July 1999 pursuant to 112(c)(3) and 112(k)(3)(B) of the CAA to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP that present the greatest threat to public health in the largest number of urban areas are subject to regulation under section 112. This listing was based on information showing that benzene emissions from the TEG dehydration units at area sources of oil and natural gas production facilities contribute at least 47 percent of the national urban emissions of benzene, one of the 30 listed area source HAP, from stationary sources that are area sources. Based on emission estimates ranking the area source categories, TEG dehydration units at area sources contributed the highest quantity of benzene of all the source categories analyzed (see Docket No. A–97–44).

B. How Did We Select the Affected Sources and Emission Points?

The 1999 area source listing in the Strategy was based on emissions information showing that TEG dehydration units emit benzene in levels that contribute significantly to nationwide emissions of benzene from area sources in urban areas. Furthermore, TEG dehydration units account for approximately 90 percent of the HAP emissions at an oil and natural gas production facility. Therefore, in listing this area source category in the Strategy in 1999, EPA focused on regulating benzene emissions from TEG dehydration units. For the same reasons, our 1998 proposal (and proposed area source finding) did not include for regulation other types of dehydration units or other emission points at area source oil and natural gas production facilities. Consistent with the 1998 proposed area source finding that benzene emissions from TEG dehydration units are the emission points of concern for this area source category, we are maintaining the 1998 proposed definition of the affected source as each TEG dehydration unit located at a facility that is an area source and that processes, upgrades, or stores hydrocarbon liquids prior to the point of custody transfer or that processes, upgrades, or stores natural gas prior to the point at which natural gas enters the natural gas transmission and storage source category or is delivered to the final end user.

We are seeking comment on the proposed applicability approaches described above as they relate directly to the scope of TEG dehydration units at oil and natural gas production

facilities that would be subject to the final rule.

C. What Changes to the Applicability Requirements for Area Sources Are Part of This Supplemental Notice?

The 1998 area source proposal contained geographical applicability criteria for area source TEG dehydration units that would have limited the application of area source standards to those selected area source TEG dehydration units located in counties we classified as Urban-1 or Urban-2, referred to herein as "urban."

As stated earlier, today, we are proposing an alternative to the geographical applicability criteria proposed in 1998. If finalized, the 1998 criteria would require all TEG dehydration units at area source oil and natural gas production facilities in areas that meet the urban requirements to comply with the final rule. See supra fn. 2. The alternative option we are proposing for the first time today, if finalized, would require TEG dehydration units at area source oil and natural gas production facilities in urban and rural counties to comply with the requirements of the final rule. In sum, we are proposing two options for defining geographically the scope of the area source standards. The standards would apply: (1) In urban and rural counties; or (2) in urban counties only (the 1998 proposal).

In the 1998 proposal, we estimated that there were 37,000 area source glycol dehydrators in the U.S., and that TEG dehydrators comprised most of that figure. Based on more recent information from the Department of Energy (DOE) regarding the number of oil and gas wells and the amount of natural gas produced in the U.S., we have updated this figure to approximately 38,000 dehydrators.

Although we believe our estimate of TEG dehydrator population is reasonable, we lack information indicating the locations of most of these units. Therefore, in assessing the impacts of the different applicability options being considered, we made several assumptions. Using DOE data from 2003, we identified 13 States where 95 percent of the natural gas in the U.S. is produced (Texas, New Mexico, Oklahoma, Wyoming, Louisiana, Colorado, Alaska, Kansas, California, Utah, Michigan, Alabama and Mississippi). First, although Outer Continental Shelf (OCS) sources contribute over 20 percent of the 2003 natural gas production total, we assumed that none of the sources on the OCS are uncontrolled area sources that would be impacted by the final rule. This assumption is based on a belief that these sources are generally controlled through flares for safety purposes. Next, we assumed a uniform distribution of sources by assigning 95 percent of the estimated number of sources in the 13 States in proportion to their percentage of natural gas production. Finally, we assumed a linear distribution within each of the 13 States that is proportional to the amount of geographical area encompassed by a given option (*i.e.*, for an option encompassing areas covering 20 percent of the 13-State landmass would contain 20 percent of the area source glycol dehydrators). We realize this approach does not yield precise results for determining affected facility populations for individual options, and it assumes a uniform distribution of sources between rural and urban areas, but we believe it is useful for comparing different options and estimating the number of potentially affected units.

The urban/rural classification status of some counties may change every 10 years as the population is reassessed by the U.S. Census Bureau. These changes occur with increases in U.S. population and also with population relocation. These changes may cause land area classifications to change from one where the rule would not apply to a classification where it would apply. The reverse case is also a possibility although we would expect such a scenario to be infrequent.

For the urban county option, sources would be required to determine the final rule's applicability based on data from the latest decennial census. Based on the latest decennial data, sources in urban counties would be required to comply with the requirements of the final rule. We would recommend that those sources not subject to requirements of the final rule document their status and retain a record of their finding. We further recommend that all sources in rural counties reconfirm their status related to geographical location within 6 months after the release of the latest decennial census results.

Proposed Applicability Options [3]

Option 1:

Under option 1, all TEG dehydrators at area source oil and natural gas production facilities would be subject to the final rule. This applicability option provides a HAP reduction of approximately 14,700 Mg/yr (16,400 tpy) and requires an estimated 2,200 TEG dehydrators to reduce emissions.

Option 1 would ensure that units effecting every urban area would be subject to regulation. It would also ensure that benzene is reduced in non-densely populated areas which can provide additional benefits since benzene is a carcinogen and a national risk driver based on our National Air Toxics Assessment (NATA). (NATA is our program for evaluating air toxics in the U.S. and involves: Expanding air toxics monitoring, improving/updating emission inventories, improving small and large scale modeling, as well as improving our knowledge of health effects and assessment tools (*see http://www.epa.gov/ttn/atw/nata/* for additional information about NATA)). Moreover, reduction in benzene emissions from affected sources in urban and rural counties brings us closer to one goal of the Strategy (*i.e.*, to achieve a 75 percent reduction in cancer incidence). With this option, there is no issue of change in geographical applicability with decennial census updates (*i.e.*, neither the regulators nor the sources need to be concerned with keeping track of changes in the applicability of this rule due to future changes in population density). We do, however, believe that option 1 raises an issue because it requires emission reductions for sources located in remote areas many miles from densely populated areas. As noted above, GACT for lower emitting sources (*i.e.*, sources with either a natural gas throughput below 3 MMSCFD or emitting less than 1 tpy of benzene) is no control. We estimate the annual compliance cost for this option to be $39.2 million.

Option 2:

This option, which was in the 1998 proposal, would provide HAP emission reductions of approximately 6,900 Mg/yr (7,700 tpy) in counties with MSA populations exceeding 250,000 people and in counties where the majority of people are classified by the U.S. Census Bureau to live in urban areas based on 2000 census data. This applicability option would require an estimated 1,050 facilities to control emissions. Since this applicability option is a county-based scope, and since the Urban-2 county classification is based on percentage of people in urban areas within a county, we believe changes in county status from rural to urban from one decennial census to the next could occur as densely settled areas grow. For determining initial applicability, sources would know immediately which facilities would be subject to the emission reduction requirements simply based on county designation. However, the urban/rural designation provides an imperfect measure of population density

[3] We do not believe that the GACT analysis and subcategorization of TEG dehydration units described above would change based on the applicability option selected in the final rule.

in the immediate vicinity of TEG dehydrators. Thus, under this option emission reductions may be required from sources in remote areas of counties meeting the urban criteria and, at the same time, TEG dehydrators may be located in densely populated areas in unregulated rural counties. Thus, units located in similarly populated areas would be regulated differently based on county designation. We estimate the annual compliance cost for this applicability option to be $18.5 million.

We specifically request comment on both applicability options and on possible alternative approaches that might better reflect population density and exposure. We also request information related to the locations of TEG dehydration units at area source oil and natural gas production facilities.

D. What Changes are We Proposing to the Startup, Shutdown, and Malfunction Plan Requirements?

In the 1998 proposal, we proposed that owners and operators of TEG dehydration units subject to the area source standards would not be subject to the requirements of 40 CFR 63.6(e) of the General Provisions for developing and maintaining a startup, shutdown, and malfunction (SSM) plan, or the requirements of 40 CFR 63.10(d) of the General Provisions for reporting actions not consistent with the plan. Rather than developing a SSM plan and submitting reports in accordance with that plan, we proposed an alternative to the General Provisions where owners and operators of affected area sources should only submit reports of any malfunctions that are not corrected within 2 calendar days of the malfunction within 7 days of the subject malfunction(s). It was our intent that the 1998 proposal would require only the submittal of malfunction reports, and not the development and implementation of a SSM plan, and that such an approach would reduce burden.

Commenters on the 1998 proposal stated that submittal of malfunction reports would be burdensome and impractical, particularly in remote locations that do not have full time operators onsite. They recommended that area sources be allowed to develop a simplified contingency plan, adopt and update the plan using their notification of compliance status reports, and allow for compilation of all events in which special action was taken that is inconsistent with the plan to be submitted in monthly letter reports. Commenters also suggested that sources be allowed more time to correct malfunctions and report them, given the nature of their operations and staffing.

Based on these comments, we have decided to follow the requirements of the General Provisions regarding SSM events. We believe that the unique nature of unmanned or remote area source oil and natural gas production facilities can best be addressed by having owners or operators prepare an SSM plan that would provide needed flexibility of dealing with SSM events at these sites. The SSM plan could be tailored to identify SSM events posing concerns for them and establish appropriate procedures for minimizing emissions and making necessary repairs in the manner suitable for each situation. The purposes of a SSM plan are to: ensure that the owner or operator operates and maintains each affected source in such a way that minimizes emissions in a manner consistent with safety and good air pollution control practices, ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence to minimize excess emissions, and reduce the reporting burden associated with SSM events. The submittal of separate SSM reports are only required if actions taken during these events are not consistent with the plan. Events handled in accordance with the SSM plan are documented and included with the periodic reports. For the reasons stated above, we have revised the SSM provisions for area sources in the 1998 proposal to require the development and implementation of SSM plans, as opposed to malfunction reports as proposed in 1998. We are proposing the same SSM requirements that we have for major sources, except the timing of periodic SSM reports. Because we are proposing that area sources submit annual rather than reports, area sources may submit such reports annually.

IV. Summary of Environmental, Energy, Cost, and Economic Impacts

The environmental and cost impacts for the proposed options are presented in Table 3 of this preamble:

TABLE 3.—SUMMARY OF NATIONAL IMPACTS FOR THE GEOGRAPHICAL OPTIONS FOR THE OIL AND NATURAL GAS PRODUCTION NESHAP

	Number of controlled sources	Emission reduction (Mg/yr)			Total annual compliance cost (million $/yr)
		VOC	HAP	Benzene	
Option 1	2,200	28,600	14,700	4,400	39.2
Option 2	1,050	13,700	6,900	2,070	18.5

A. What Are the Air Quality Impacts?

For existing area source TEG dehydration units in the oil and natural gas production source category, we estimate that nationwide baseline area sources HAP emissions are 45,100 Mg/yr (49,600 tpy). The standards being proposed with today's supplemental notice require that TEG dehydration units with a natural gas throughput greater than 85 thousand standard cubic meters per day and benzene emissions greater than 0.90 Mg/yr (1.0 tpy) achieve a 95 percent emission reduction either through pollution prevention process changes or by installing a control device (*e.g.*, condenser).

We anticipate that no new area source TEG dehydration units will be constructed over the next 5 years based on an assumption that any new sources constructed during this period will be major sources. We specifically request comment on this assumption. Emission reduction requirements for new sources are the same as for existing sources.

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the final standards. These impacts are exclusive of the direct organic HAP air emissions reductions discussed in the previous section.

The capture and control of benzene that is presently emitted from area source TEG dehydration units will result in a decrease in volatile organic compound (VOC) emissions as well. The estimated total VOC emissions reductions shown above are from a nationwide baseline of 86,500 Mg/yr (95,200 tpy).

Emissions of VOC have been associated with a variety of health and

welfare impacts. VOC emissions, together with nitrogen oxides, are precursors to the formation of groundlevel ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

Other secondary environmental impacts are those associated with the operation of certain air emission control devices (*i.e.*, flares). The adverse secondary air impacts would be minimal in comparison to the primary HAP reduction benefits from implementing the proposed control options for area sources. We estimate that national annual increase of secondary air pollutant emissions that would result from the use of a flare to comply with the proposed standards is less than 1 Mg/yr (0.24 tpy) for sulfur oxides, 2.2 Mg/yr (2.4 tpy) for carbon monoxide, and 11 Mg/yr (12 tpy) for nitrogen oxides based on option 1, which affects the largest number of sources.

B. What Are the Cost Impacts?

Since several compliance options are available to owners/operators of affected sources, we are not sure what control method will be employed. Sources can control emissions by routing emissions to a condenser, a flare, a process heater, or back to the process or by implementing pollution prevention process changes. Some of these options have very low capital costs, however, for the purpose of determining costs, we have assumed that 90 percent of the affected sources utilize condensers and 10 percent use flares. For the cost estimates developed for condenser systems, we looked at systems with and without the use of a gas condensate glycol separator (GCG separator or flash tank) in TEG dehydration system design.

The estimated annual costs shown in Table 3 of this preamble include the capital cost; operating and maintenance costs; the cost of monitoring, inspection, recordkeeping, and reporting (MIRR); and any associated product recovery credits.

C. What Are the Economic Impacts?

For the 1998 proposal, we prepared an economic impact analysis evaluating the impacts of the rule on affected producers, consumers, and society. The economic analysis focuses on the regulatory effects on the U.S. natural gas market that is modeled as a national, perfectly competitive market for a homogenous commodity.

The results of the analysis show that the imposition of regulatory costs on the natural gas market would result in negligible changes in natural gas prices, output, employment, foreign trade, and business closures. The price and output changes as a result of the 1998 proposed regulation were estimated to be less than 0.01 percent, significantly less than observed market trends. Because we believe that these assumptions are relevant for both applicability options described in today's proposal and that the result of the 1998 economic impact analysis resulted in a very low percent increase in price and output changes, we believe that imposition of regulatory costs associated with the proposed applicability options will result in negligible changes in natural gas prices, output, employment, foreign trade, and business closures.

D. What Are the Non-air Environmental and Energy Impacts?

The water impacts associated with the installation of a condenser system for the TEG dehydration unit reboiler vent would be minimal. This is because the condensed water collected with the hydrocarbon condensate can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with produced water for disposal by reinjection.

Similarly, the water impacts associated with installation of a vapor control system would be minimal. This is because the water vapor collected along with the hydrocarbon vapors in the vapor collection and redirect system can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with the produced water for disposal for reinjection.

Therefore, we expect the adverse water impacts from the implementation of control options for either option considered for proposed area source standards to be minimal.

We do not anticipate any adverse solid waste impacts from the implementation of the area source standards.

Energy impacts are those energy requirements associated with the operation of emission control devices. There would be no national energy demand increase from the operation of any of the control options analyzed under the proposed oil and natural gas production standards for area sources. The proposed area source standards encourage the use of emission controls that recover hydrocarbon products, such as methane and condensate, that can be used on-site as fuel or reprocessed, within the production process, for sale. Thus, both options considered for proposed standards have a positive impact associated with the recovery of non-renewable energy resources.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more, adversely affecting in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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 entitlement, grants, user fees, or loan programs of 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.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The OMB has previously approved the information collection requirements in the existing major source rule (40 CFR part 63, subpart HH). The information collection requirements in the proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1788.07.

The information to be collected for the area source provisions of the Oil and Natural Gas Production NESHAP are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions in 40 CFR part 63, subpart A, which are mandatory

for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions in subpart A to 40 CFR part 63. The recordkeeping requirements require only the specific information needed to determine compliance.

The oil and natural gas production NESHAP require that facility owners or operators retain records for a period of 5 years, which exceeds the 3 year retention period contained in the guidelines in 5 CFR 1320.6. The 5-year retention period is consistent with the General Provisions of 40 CFR part 63, and with the 5-year records retention requirement in the operating permit program under title V of the CAA. All subsequent guidelines have been followed and do not violate any of the Paperwork Reduction Act guidelines contained in 5 CFR 1320.6.

The burden and associated costs discussed here are based on option 1 since it would affect the greatest number of sources among the two proposed applicability options. The annual projected burden for this information collection to owners and operators of affected sources subject to the final rule (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 209,322 labor-hours per year, with a total annual cost of $17.1 million per year. These estimates include a one-time performance test and report (with repeat tests where needed); Preparation of a startup, shutdown, and malfunction plan; immediate reports for any event when the procedures in the plan were not followed; annual compliance reports; maintenance inspections; notifications; and recordkeeping.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, EPA has established a public docket for the proposed rule, which includes this ICR, under Docket ID number OAR–2004–0238. Submit any comments related to the ICR for the proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 8, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by August 8, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration size standards of 1,500 employees and a mass throughput of 75,000 barrels/day or less, and 4 million kilowatt-hours of production or less, respectively; (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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, I certify that the proposed rule will not have a significant impact on a substantial number of small entities. While we cannot predict the exact number of small entities that will be subject to the control requirements of the final rule, the proposed rule provides that GACT for certain subcategories (85 thousand m^3/day (3 MMSCF/D)) is no control. That should minimize impacts on those small businesses that operate area source oil and natural gas production facilities. The proposed rule would require installation of emissions controls only at facilities that operate a TEG dehydration unit with an average annual natural gas throughput of 85 thousand m^3/day (3 MMSCF/D) or higher. Exempting potential sources under 85 thousand m^3/day (3 MMSCF/D) will limit the number of sources who would have to comply with the emission control requirements from approximately 38,000 potential sources to 2,222.

EPA performed an economic impact analysis to estimate the changes in product price and production quantities for the proposed rule. However, sales and revenues data were not readily available for the affected industries, so EPA began its analysis by examining the annual cost of control. The annual per unit cost of compliance with the proposed rule would be $17,699. The throughput cost for natural gas has experienced significant volatility within the past several years, making a point estimate difficult to identify. Therefore, EPA assumed a throughput value at the high end of the range of recent costs, at $88.29 per thousand cubic meters ($2.50 per thousand cubic feet), for this analysis.

One frequently-used approach for determining whether or not a rule would have a significant impact on a small entity is to compare annualized control cost with annualized revenue from sales. Typically, costs less than 1 percent of revenues are not considered as imposing a significant impact. In the present case, the annual per-unit cost of compliance is estimated to be $17,699. Using the aforementioned 1 percent criterion for significant impact, annual revenues would have to be less than $1,769,900 in order for significant impact to occur. At $88.29 per thousand cubic meters ($2.50 per thousand cubic feet) of throughput, that revenue

translates to 20,046 thousand cubic meters per year (707,960 thousand cubic feet per year) throughput, or 54.9 thousand m^3/day (1.94 MMSCF/D). Since the cutoff for installation of emissions controls for the proposed rule is 85 thousand m^3/day (3 MMSCF/D), the Agency determined the annual cost of control for those entities affected by the proposed rule is not sufficient to generate a significant impact on a substantial number of small entities.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule on small entities. In the proposed rule, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. In addition, as mentioned above, the natural gas throughput criteria should reduce the size of small entity 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, we generally must prepare a written statement, including a cost-benefit analysis, for proposed or final rules with Federal mandates that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we 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 our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the options considered in today's proposed rule contain no Federal mandate that may result in estimated costs of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule for any 1 year has been estimated to be less than $40 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires us 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, or on the distribution of power and responsibilities among the various levels of government."

Today's proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposed rule.

In the spirit of Executive order 13132, and consistent with our policy to promote communication between us and State and local governments, we specifically solicit comment on the proposed rule from State and local officials.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The proposed rule does not have tribal implications, as specified in Executive Order 13175.

The proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. We do not know of any area source TEG dehydration units owned or operated by Indian tribal governments. However if there are any, the effect of the proposed rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the proposed rule. We specifically solicit comment on the proposed rule from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to anyrule 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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The 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 Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this

rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs us to use voluntary consensus standards in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rule does not involve any additional technical standards. Therefore, the requirements of the NTTAA do not apply to this action. However, we would like to note that the draft standard ASTM Z7420Z, which was cited in the final Oil and Natural Gas Production NESHAP (64 FR 32609–32664, June 17, 1999) as a potentially practical method to use in lieu of EPA Method 18, has now been finalized by ASTM and approved by EPA for use in rules where Method 18 is cited. This new standard is ASTM D6420–99(2004), "Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry" and it is appropriate for inclusion in the proposed rule in addition to EPA Method 18 codified at 40 CFR part 60, Appendix A, for measurement of total organic carbon, total HAP, total volatile HAP, and benzene.

Similar to EPA's performance-based Method 18, ASTM D6420–99(2004) is also a performance-based method for measurement of total gaseous organic compounds. However, ASTM D6420–99(2004) was written to support the specific use of highly portable and automated gas chromatographs/mass spectrometers (GC/MS). While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99(2004) is a suitable alternative to Method 18 only where: (1) The target compound(s) are those listed in Section 1.1 of ASTM D6420–99(2004), and (2) the target concentration is between 150 ppbv and 100 ppmv. For target compound(s) not listed in Section 1.1 of ASTM D6420–99(2004), but potentially detected by mass spectrometry, the proposed rule specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99(2004), and not amenable to detection by mass spectrometry, ASTM D6420–99(2004) does not apply.

As a result, EPA will allow ASTM D6420–99 for use with the proposed rule. The EPA will also allow Method 18 as an option in addition to ASTM D6420–99(2004). This will allow the continued use of GC configurations other than GC/MS.

Under §§ 63.7(f) and 63.8(f) of 40 CFR part 63, subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: June 30, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[AMENDED]

2. Revise § 63.14(b)(29) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(29) ASTM D6420–99(2004), Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry, IBR approved for §§ 63.772(a)(1)(ii), 63.5799 and 63.5850.

* * * * *

Subpart HH—[AMENDED]

3. Section 63.760 is amended to:

a. Revise paragraph (a)(1) introductory text;

b. Revise paragraph (b) introductory text;

c. Add paragraph (b)(5);

d. Revise paragraph (f) introductory text;

e. Revise paragraphs (f)(1) and (f)(2);

f. Add paragraphs (f)(3) through (6);

g. Revise the first sentence of paragraph (g) introductory text; and

f. Add a sentence to paragraph (h) to read as follows:

§ 63.760 Applicability and designation of affected source.

(a) * * *

(1) Facilities that are major or area sources of hazardous air pollutants (HAP) as defined in § 63.761. Emissions for major source determination purposes can be estimated using the maximum natural gas or hydrocarbon liquid throughput, as appropriate, calculated in paragraphs (a)(1)(i) through (iii) of this section. As an alternative to calculating the maximum natural gas or hydrocarbon liquid throughput, the owner or operator of a new or existing source may use the facility's design maximum natural gas or hydrocarbon liquid throughput to estimate the maximum potential emissions. Other means to determine the facility's major source status are allowed, provided the information is documented and recorded to the Administrator's satisfaction. A facility that is determined to be an area source, but subsequently increases its emissions or its potential to emit above the major source levels (without first obtaining and complying with other limitations that keep its potential to emit HAP below major source levels) and becomes a major source, must comply thereafter with all provisions of this subpart applicable to a major source starting on the applicable compliance date specified in paragraph (f) of this section. Nothing in this paragraph is intended to preclude a source from limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

* * * * *

(b) The affected sources to which the provisions of this subpart apply shall comprise each emission point located at a facility that meets the criteria specified in paragraph (a) of this section and listed in paragraphs (b)(1) through (4) of this section for major sources and

paragraph (b)(5) of this section for area sources.

* * * * *

(5) For area sources, the affected source includes each triethylene glycol dehydration unit located at a facility that meets the criteria specified in paragraph (a) of this section.

* * * * *

(f) The owner or operator of an affected major source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(1) and (2) of this section. The owner or operator of an affected area source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(3) through (6) of this section.

(1) The owner or operator of an affected major source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the applicable provisions of this subpart no later than June 17, 2002 except as provided for in § 63.6(i). * * *

(2) The owner or operator of an affected major source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the applicable provisions of this subpart immediately upon initial startup or June 17, 1999, whichever date is later. * * *

Option 1 for paragraphs (f)(3) through (6):

(3) The owner or operator of an affected area source located in an urban area, as defined in § 63.761, the construction or reconstruction of which commences before February 6, 1998, shall achieve compliance with the provisions of this subpart no later than 3 years after the date of publication of the final rule in the **Federal Register** except as provided for in § 63.6(i).

(4) The owner or operator of an affected area source located in an urban area, as defined in § 63.761, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon initial startup or date of publication of the final rule in the **Federal Register**, whichever date is later.

(5) The owner or operator of an affected area source located in a rural area, as defined in § 63.761, the construction or reconstruction of which commences before July 8, 2005 shall achieve compliance with the provisions of this subpart no later than 3 years after the date of publication of the final rule in the **Federal Register** except as provided for in § 63.6(i).

(6) The owner or operator of an affected area source located in a rural area, as defined in § 63.761, the construction or reconstruction of which commences on or after July 8, 2005 shall achieve compliance with the provisions of this subpart immediately upon initial startup or date of publication of the final rule in the **Federal Register**, whichever date is later.

* * * * *

Option 2 for paragraphs (f)(3) through (6):

(3) Except as otherwise provided in paragraph (f)(5) of this section, the owner or operator of an affected area source, the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the applicable provisions of this subpart no later than three years after the date of publication of the final rule in the **Federal Register** except as provided for in § 63.6(i).

(4) Except as otherwise provided in paragraph (f)(6) of this section, the owner or operator of an affected area source, the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the applicable provisions of this subpart immediately upon startup or the date of publication of the final rule in the **Federal Register**, whichever date is later, except as provided for in § 63.6(i).

(5) If an area source, the construction or reconstruction of which commenced before February 6, 1998, becomes an affected area source due to subsequent county reclassification (based on the most recent decennial census data) from rural to urban, as defined in § 63.761, the owner or operator of such source must comply with the applicable provisions of this subpart no later than three years after the date of publication of the updated list of urban counties in the **Federal Register**, except as provided for in § 63.6(i).

(6) If an area source, the construction or reconstruction of which commences on or after February 6, 1998, becomes an affected area source due to subsequent county reclassification (based on the most recent decennial census data) from rural to urban, as defined in § 63.761, the owner or operator of such source must comply with the applicable provisions of this subpart on the date of publication of the updated list of urban counties in the **Federal Register**, or initial startup, whichever date is later, except as provided for in § 63.6(i)

* * * * *

(g) The following provides owners or operators of an affected source at a major source with information on overlap of this subpart with other regulations for equipment leaks. * * *

* * * * *

(h) * * * Unless otherwise required by law, the owner or operator of an area source subject to the provisions of this subpart is exempt from the permitting requirements established by 40 CFR part 70 or 40 CFR part 71.

4. Section 63.761 is amended by adding, in alphabetical order, the definitions of "rural area" and "urban area" to read as follows:

§ 63.761 Definitions.

* * * * *

Rural area means a county not defined as an urban area.

* * * * *

Option 1 for the definition of "urban area":

Urban area is defined by use of the 2000 U.S. Census Bureau statistical decennial census data to classify designated counties in the U.S. into one of two classifications:

(1) Urban-1 areas which are counties that contain a part of a metropolitan statistical area with a population greater than 250,000;

(2) Urban-2 areas which are counties where more than 50 percent of the population is classified by the U.S. Census Bureau as urban.

* * * * *

Option 2 for the definition of "urban are":

Urban area is defined by use of the most current U.S. Census Bureau statistical decennial census data to classify designated counties in the U.S. into one of two classifications:

(1) Urban-1 areas which are counties that contain a part of a metropolitan statistical area with a population greater than 250,000;

(2) Urban-2 areas which are counties where more than 50 percent of the population is classified by the U.S. Census Bureau as urban.

* * * * *

5. Section 63.764 is amended to:

a. Add paragraph (d);

b. Revise paragraph (e)(1), introductory text; and

c. Add paragraph (g) to read as follows:

§ 63.764 General standards.

* * * * *

(d) Except as specified in paragraph (e)(1) of this section, the owner or operator of an affected source located at an existing or new area source of HAP emissions shall comply with the standards in this subpart as specified in paragraphs (d)(1) through (3) of this section.

(1) The control requirements for glycol dehydration unit process vents specified in § 63.765;

(2) The monitoring requirements specified in § 63.773; and

(3) The recordkeeping and reporting requirements specified in §§ 63.774 and 63.775.

* * * * *

(e) * * *

(1) The owner or operator is exempt from the requirements of paragraphs (c)(1) and (d) of this section if the criteria listed in paragraphs (e)(1)(i) or (ii) of this section are met, except that the records of the determination of these criteria must be maintained as required in § 63.774(d)(1).

* * * * *

(g) Unless otherwise required by law, the owner or operator of an area source subject to the provisions of this subpart is exempt from the permitting requirements established by 40 CFR part 70 or part 71.

* * * * *

6. Section 63.765 is amended by revising paragraph (a) to read as follows:

§ 63.765 Glycol dehydration unit process vent standards.

(a) This section applies to each glycol dehydration unit subject to this subpart with an actual annual average natural gas flowrate equal to or greater than 85 thousand standard cubic meters per day, and with actual average benzene glycol dehydration unit process vent emissions equal to or greater than 0.90 megagrams per year, that must be controlled for HAP emissions as specified in either paragraph (c)(1)(i) or paragraph (d)(1) of § 63.764.

* * * * *

7. Section 63.772 is amended to:

a. Revise paragraph (a)(1);

b. Revise the first sentence of paragraph (b)(*2*)(ii);

c. Revise paragraph (e)(3)(iii) introductory text,

d. Revise paragraph (e)(3)(iii)(B)(*2*); and

e. Revise the first and second sentences of paragraph (e)(iv) introductory text to read as follows:

§ 63.772 Test methods, compliance procedures, and compliance demonstrations.

(a) * * *

(1) For a piece of ancillary equipment and compressors to be considered not in VHAP service, it must be determined that the percent VHAP content can be reasonably expected never to exceed 10.0 percent by weight. For the purposes of determining the percent VHAP content of the process fluid that is contained in or contacts a piece of ancillary equipment or compressor, you shall use the method in either paragraph (a)(1)(i) or (ii) of this section.

(i) Method 18 of 40 CFR part 60, appendix A; or

(ii) ASTM D6420–99(2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (incorporated by reference—see § 63.14), provided that the provisions of paragraphs (A) through (D) of this section are followed:

(A) The target compound(s) are those listed in section 1.1 of ASTM D6420–99(2004);

(B) The target concentration is between 150 parts per billion by volume and 100 parts per million by volume;

(C) For target compound(s) not listed in Table 1.1 of ASTM D6420–99(2004), but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in section 10.5.3 of ASTM D6420–99(2004), is conducted, met, documented, and submitted with the data report, even if there is no moisture condenser used or the compound is not considered water soluble; and

(D) For target compound(s) not listed in Table 1.1 of ASTM D6420–99(2004), and not amenable to detection by mass spectrometry, ASTM D6420–99(2004) may not be used.

* * * * *

(b) * * *

(2) * * *

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement using the methods in § 63.772(a)(1)(i) or (ii), or an alternative method according to § 63.7(f). * * *

* * * * *

(e) * * *

(3) * * *

(iii) To determine compliance with the control device percent reduction performance requirement in § 63.771(d)(1)(i)(A), (d)(1)(ii), and (e)(3)(ii), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A; or ASTM D6420–99(2004) as specified in § 63.772(a)(1)(ii). Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, as specified in § 63.7(f) may be used. The following procedures shall be used to calculate percent reduction efficiency:

* * * * *

(B) * * *

(*2*) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, or ASTM D6420–99(2004) as specified in § 63.772(a)(1)(ii), shall be summed using the equations in paragraph (e)(3)(iii)(B)(*1*) of this section.

* * * * *

(iv) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the owner or operator shall use either Method 18, 40 CFR part 60, appendix A, or Method 25A, 40 CFR part 60, appendix A, or ASTM D6420–99(2004) as specified in § 63.772(a)(1)(ii), to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that have been validated according to Method 301 of appendix A of this part, as specified in § 63.7(f), may be used. * * *

* * * * *

8. Section 63.774 is amended by revising paragraph (d)(1) introductory text to read as follows:

§ 63.774 Recordkeeping requirements.

* * * * *

(d) * * *

(1) An owner or operator that is exempt from control requirements under § 63.764(e)(1) shall maintain the records specified in paragraph (d)(1)(i) or (d)(1)(ii) of this section, as appropriate, for each glycol dehydration unit that is not controlled according to the requirements of paragraph (c)(1)(i) or (d)(1) of § 63.764.

* * * * *

9. Section 63.775 is amended to:

a. Add paragraph (c);

b. Revise paragraph (e) introductory text; and

c. Add paragraph (e)(3) to read as follows:

§ 63.775 Reporting requirements.

* * * * *

(c) Each owner or operator of an area source subject to this subpart shall submit the information listed in paragraphs (c)(1) through (6) of this section, except as provided in paragraph (c)(7).

(1) The initial notifications required under § 63.9(b)(2) shall be submitted not later than 1 year following the date of publication of the final rule in the **Federal Register**.

(2) If an owner or operator is required by the Administrator to conduct a performance evaluation for a continuous monitoring system, the date of the performance evaluation as specified in § 63.8(e)(2).

(3) The planned date of a performance test at least 60 days before the test in accordance with § 63.7(b). Unless requested by the Administrator a site-specific test plan is not required by this subpart. If requested by the Administrator, the owner or operator must submit the site-specific test plan required by § 63.7(c) with the notification of the performance test. A separate notification of the performance test is not required if it is included in the initial notification submitted in accordance with paragraph (c)(1) of this section.

(4) A Notification of Compliance Status as described in paragraph (d) of this section.

(5) Periodic reports as described in paragraph (e)(3) of this section.

(6) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) shall be submitted as required. Separate startup, shutdown, and malfunction reports as described in § 63.10(d)(5) are not required if the information is included in the Periodic Report specified in paragraph (e) of this section.

(7) Each owner or operator of a triethylene glycol dehydration unit subject to this subpart that is exempt from the control requirements for glycol dehydration unit process vents in § 63.765, is exempt from all reporting requirements for area sources in this subpart, for that unit.

* * * * *

(e) *Periodic Reports.* An owner or operator of a major source shall prepare Periodic Reports in accordance with paragraphs (e)(1) and (2) of this section and submit them to the Administrator. An owner or operator of an area source shall prepare Periodic Reports in accordance with paragraph (e)(3) of this section and submit them to the Administrator.

* * * * *

(3) An owner or operator of an area source shall prepare and submit Periodic Reports in accordance with paragraphs (e)(3)(i) through (iii) of this section.

(i) Periodic reports must be submitted on an annual basis. The first reporting period shall cover the period beginning on the date the Notification of Compliance Status Report is due and ending on December 31. The report shall be submitted within 30 days after the end of the reporting period.

(ii) Subsequent reporting periods begin every January 1 and end on December 31. Subsequent reports shall be submitted within 30 days following the end of the reporting period.

(iii) The periodic reports must contain the information included in paragraph (e)(2) of this section.

* * * * *

10. Revise Table 2 to subpart HH of part 63 to read as follows:

Appendix to Subpart HH of Part 63—Tables

* * * * *

TABLE 2 TO SUBPART HH OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Explanation
§ 63.1(a)(1)	Yes.	
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes.	
§ 63.1(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6) through (a)(8)	Yes.	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12) through (a)(14)	Yes.	
§ 63.1(b)(1)	No	Subpart HH specifies applicability.
§ 63.1(b)(2)	Yes.	
§ 63.1(b)(3)	No.	
§ 63.1(c)(1)	No	Subpart HH specifies applicability.
§ 63.1(c)(2)	No.	
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HH.
§ 63.3(a) through (c)	Yes.	
§ 63.4(a)(1) through (a)(3)	Yes.	
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes.	
§ 63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes.	
§ 63.5(b)(5)	Yes.	
§ 63.5(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes.	
§ 63.5(d)(2)	Yes.	
§ 63.5(d)(3)	Yes.	

TABLE 2 TO SUBPART HH OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.5(d)(4)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)(1)	Yes.	
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)	Yes.	
§ 63.6(b)(2)	Yes.	
§ 63.6(b)(3)	Yes.	
§ 63.6(b)(4)	Yes.	
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)	Yes.	
§ 63.6(c)(2).		
§ 63.6(c)(3) through (c)(4)	No	Section reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes.	
§ 63.6(e)(1)(i)	No	Except as otherwise specified. Addressed in § 63.762.
§ 63.6(e)(1)(ii)	Yes.	
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(2)	Yes.	
§ 63.6(e)(3)(i)	Yes.	
§ 63.6(e)(3)(i)(A)	No	Except as otherwise specified. Addressed in § 63.762(c).
§ 63.6(e)(3)(i)(B)	Yes.	
§ 63.6(e)(3)(i)(C)	Yes.	
§ 63.6(e)(3)(ii) through (3)(vi)	Yes.	
§ 63.6(e)(3)(vii)	Yes.	
§ 63.6(e)(3)(vii)(A)	Yes.	
§ 63.6(e)(3)(vii)(B)	Yes	Except that the plan must provide for operation in compliance with § 63.762(c)
§ 63.6(f)(1)	Yes.	
§ 63.6(f)(2)	Yes.	
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart HH does not contain opacity or visible emission standards.
§ 63.6(i)(1) through (i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes	But the performance test results must be submitted within 180 days after the compliance date.
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	Yes.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	Yes.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	No.	
§ 63.8(c)(5) through (c)(8)	Yes.	
§ 63.8(d)	Yes.	
§ 63.8(e)	Yes	Subpart HH does not specifically require continuous emissions monitor performance evaluation, however, the Administrator can request that one be conducted.
§ 63.8(f)(1) through (f)(5)	Yes.	

TABLE 2 TO SUBPART HH OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Explanation
§ 63.8(f)(6)	No	Subpart HH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Existing sources are given 1 year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes.	
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	Yes.	
§ 63.9(g)	Yes.	
§ 63.9(h)(1) through (h)(3)	Yes.	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5) through (h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes	§ 63.77 4(b)(1) requires sources to maintain the most recent 12 months of data on site and allows offsite storage for the remaining 4 years of data.
§ 63.10(b)(2)	Yes.	
§ 63.10(b)(3)	No	Section reserved.
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2) through (c)(4)	No	Sections reserved.
§ 63.10(c)(5) through (c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10) through (c)(15)	Yes.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes.	
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	Yes	Subpart HH requires major sources to submit a startup, shutdown and malfunction report semi-annually.
§ 63.10(e)(1)	Yes.	
§ 63.10(e)(2)	Yes.	
§ 63.10(e)(3)(i)	Yes	Subpart HH requires major sources to submit Periodic Reports semi-annually. Area sources are required to submit Periodic Reports annually.
§ 63.10(e)(3)(i)(A)	Yes.	
§ 63.10(e)(3)(i)(B)	Yes.	
§ 63.10(e)(3)(i)(C)	No	Subpart HH does not require quarterly reporting for excess emissions.
§ 63.10(e)(3)(ii) through (viii)	Yes.	
§ 63.10(f)	Yes.	
§ 63.11(a) and (b)	Yes.	
§ 63.12(a) through (c)	Yes.	
§ 63.13(a) through (c)	Yes.	
§ 63.14(a) and (b)	Yes.	
§ 63.15(a) and (b)	Yes.	

[FR Doc. 05–13480 Filed 7–7–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AZ–NESHAPS–131b; FRL–7935–1]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pima County Department of Environmental Quality; State of Nevada; Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act, EPA granted delegation of specific national emission standards for hazardous air pollutants (NESHAPs) to the Pima County Department of Environmental Quality (PDEQ) and the Nevada Division of Environmental Protection on December 28, 2004, and April 15, 2005, respectively. EPA is proposing to revise regulations to reflect the current delegation status of NESHAPs in Arizona and Nevada.

DATES: Any comments on this proposal must arrive by August 8, 2005.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*. Copies of the request for delegation and other supporting documentation are available for public inspection at EPA's Region IX office during normal business hours by appointment.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns the delegation of unchanged NESHAPs to the Pima County Department of Environmental Quality and the Nevada Division of Environmental Protection. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAPs in Arizona and Nevada. EPA is taking direct final action without prior proposal because the Agency believes these actions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: June 24, 2005.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. 05–13484 Filed 7–7–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7453]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Mitigation Division, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under

Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4*

2. The tables published under the authority of § 67.4 are proposed to be revised to read as follows:

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD)	
				Existing	Modified
California	Redding, Shasta County.	Churn Creek	Approximately 250 feet upstream of (Upper) Churn Creek Road.	*465	*465
			Approximately 3,350 feet upstream of (Upper) Churn Creek Road.	*472	*471
California	Shasta County	Churn Creek	At the confluence of Churn Creek and the Sacrament River.	None	*410
			Approximately 250 feet upstream of (Upper) Churn Creek Road.	None	*465

*National Geodetic Vertical Datum 1929

Maps are available for inspection at City Hall, 777 Cypress Avenue, 1st Floor, Redding, CA 96001.

Send comment to The Honorable John Mathena, Mayor, City of Redding, 777 Cypress Avenue, 3rd Floor, Redding, CA 96001.

Maps are available for inspection at the County Courthouse, 1855 Placier Street, Redding, CA 96001.

Send comments to The Honorable Glen Hawes, Chairman, Shasta County Board of Supervisors, 1815 Yuba Street, Suite 1, Redding, CA 96001.

California	Sonoma County	Russian River	At confluence with Dry Creek	*84	*85
			At U.S Highway 101	*88	*90
California	Healdsburg, Sonoma County.	Russian River	Just upstream of U.S. Highway 101	*88	*90
			Approximately 6,750 feet Railroad	*104	*104
California	Healdsburg, Sonoma County.	Russian River-Split Flow	At the Convergence with Russian River	None	*90
			At the Divergence from Russian River	None	*99

*National Geodetic Vertical Datum 1929

Maps are available for inspection at City of Healdsburg, City Hall, 401 Grove Street, Healdsburg, CA 95448.

Send comments to The Honorable Jason Liles, Mayor, City of Healdsburg, 401 Grove Street, Healdsburg, CA 95448.

Maps are available for inspection at Permit and Resource Management Department, 2550 Ventura Avenue, Santa Rosa, CA 95403.

Send comments to The Honorable Tim Smith, Chairman, Sonoma County, 575 Administration Drive, Suite 100A, Santa Rosa, CA 95403.

Iowa	Tama County	Deer Creek	Approximately 2,700 feet upstream of confluence of Deer Creek with Iowa River.	None	+819
			Approximately 400 feet downstream of 13th Street.	None	+823
Iowa	Tama County	Iowa River	Approximately 1,400 feet downstream of Iowa River.	None	+784
			Approximately 2 miles upstream of Station Street.	None	+788
Iowa	Tama County	Iowa River at City of Tama	Approximately 7,000 feet downstream of U.S highway 63.	None	+814
			Approximately 1,800 feet upstream of confluence of Deer Creek with Iowa River.	None	+819
Iowa	Tama County	Mud Creek	At Confluence with Iowa River	None	+814
			Just downstream of 9th Street	None	+836
Iowa	Tama County	Otter Creek	Just west of the intersection of Station Street and Highway 212.	None	+785

+North American Vertical Datum 1988

Maps are available for inspection at the 100 North Main Street, Toledo, Iowa 52342.

Send comments to The Honorable Jim Ledvina, Chairman, Tama County Board of Supervisors, P.O. Box 61, Toledo, Iowa 52343.

Missouri	Linn	Long Branch Creek	Just upstream of Highway 11	None	+735
			Approximately 1,800 feet downstream of Iva Road.	None	+737

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD)	
				Existing	Modified
Missouri	Linn	West Yellow Creek	Approximately 2,000 feet downstream	None	+727
			Just downstream of Highway 11	None	+734

+North American Vertical Datum 1988

Maps are available for inspection at the Linn County, County Courthouse, 108 North High Street, Linneus, Missouri 64653.

Send comments to The Honorable Rick Solmonson, Presiding Commissioner, Linn County, 108 North High Street, Room 103, Linneus, MO 64653–0092.

North Dakota	Pembina County	Pembina River	At 145th Avenue, NE	None	+831
			Approximately 1.7 miles upstream of State Highway 18.	None	+841
North Dakota	Neche (City), Pembina County.	Pembina River	Approximately 3,000 feet upstream of 145th Avenue NE.	None	+832
			At State Highway 18	None	+835

+North American Vertical Datum 1988

Maps are available for inspection at the County Courthouse, 301 Dakota Street West, Suite 1, Cavalier, North Dakota 58220.

Send comments to The Honorable Gary Nilssen, Chairman, Pembina County Board of Commissioners, 301 Dakota Street West, Suite 1, Cavalier, North Dakota 58220.

Maps are available for inspection at City Hall, 531 5th Street, Neche, North Dakota 58265.

Send comments to The Honorable Lee Beattie, Mayor, City of Neche, P.O. Box 82, Neche, North Dakota 58265.

Oregon	Polk County (Uninc. Areas).	North Fork Ash Creek	Confluence with Middle Fork Ash Creek	+174	+177
			At Hoffman Road	+178	+180
Oregon	City of Independence, City of Monmouth, Polk County (Uninc. Areas).	Ash Creek	Approximately 100 feet downstream of Gun Club Road.	+163	+167
			At confluence of Middle Fork Ash Creek and North Fork Ash Creek.	+174	+177
	City of Independence.	Ash Creek	At confluence with Ash Creek	None	+168
Oregon	City of Monmouth, Polk County (Uninc. Areas).	Overflow Channel	At divergence from Ash Creek	None	+177

+North American Vertical Datum

ADDRESSES

Unincorporated Areas of Polk County

Maps are available for inspection at the Community Development, 850 Main Street, Dallas, Oregon 97338.

Send comments to Chairman, Ron Dodge, 850 Main Street, Dallas, Oregon 97338.

City of Independence

Maps are available for inspection at Community Development, 240 Monmouth Street, Independence, Oregon 97351.

Send comments to the Honorable John McArdle, 240 Monmouth Street, Independence, Oregon 97351.

City of Monmouth

Maps are available for inspection at Community Development, 240 Monmouth Street, Independence, Oregon 97351.

Send comments to the Honorable Larry Dalton, 151 West Main Street, Monmouth, Oregon 97361.

Utah	Summit County	East Canyon Creek	Approximately 2,200 feet upstream of confluence with Threemile Canyon Creek.	None	+6,313
			Approximately 150 feet of upstream of Bitner Branch Road.	None	+6,375
Utah	Summit County	Kimball Creek	At confluence with North Parkley's Park Drainage.	None	+6,375
			Just downstream of Old Ranch Road Canal.	None	+6,438
Utah	Summit County	McLeod Creek	At Canal Entrance Culvert	None	+6,506
			Approximately 350 feet downstream of Route 224.	None	+6,629
Utah	Summit County	North Parkley's Park Drainage.	At the confluence with Kimball Creek	None	+6,375
			Approximately 15,800 feet upstream of confluence with Kimball Creek.	None	+6,430
Utah	Summit County	Red Pine Creek	At confluence with McLeod Creek	None	+6,538

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD)	
				Existing	Modified
Utah	Summit County	McLeod Creek through Quarry Mountain.	Approximately 100 feet downstream of Route 224.	None	+6,694
			Just upstream of Old Ranch Road Canal	None	+6,438
			At divergence from McLeod Creek	None	+6,584

+North American Vertical Datum 1988
Maps are available for inspection at Summit County Courthouse, 60 North Main, Coalville, UT 84017.
Send comments to The Honorable Kenneth Woolstenhulme, Chairman, Summit County, P.O. Box 128, Coalville, Utah 84017.

Virginia	Shenandoah County.	Stony Creek	Approximately 1,150 feet downstream of Dellinger Acres Road.	None	*1,082
			Approximately 1.63 miles upstream of Lake Laura Dam.	None	*1,375

*National Geodetic Vertical Datum 1929
Maps are available for inspection at Planning and Zoning Office, 600 North Main Street, Suite 107, Woodstock, VA 22664.
Send comments to Mr. Vincent Poling, Administrator, Shenandoah County, 600 North Main Street, Suite 102, Woodstock, VA 22664.

Washington	Ferry County	Sanpoil River	At border with Colville Indian Reservation	None	+2,025
			Approximately 600 feet upstream of Fish Hatchery Road (Route 21).	None	+2,430

+North American Vertical Datum 1988
Maps are available for inspection at County Courthouse, 290 East Tessie Avenue, Republic, WA 99166.
Send comments to Mr. Dennis Snook, Chairman, Ferry County, 290 East Tessie Avenue, Republic, WA 99166.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Coweta County, Georgia and Incorporated Areas				
Little Wahoo Creek	Approximately 130 feet upstream of confluence with Wahoo Creek.	+799	+800	Coweta County (Uninc. Areas).
	Approximately 1,100 feet upstream of confluence with Wahoo Creek.	+799	+800	
Snake Creek	Approximately 170 feet upstream of confluence with Wahoo Creek.	+795	+796	Coweta County (Uninc. Areas).
	Approximately 4,200 feet upstream of confluence with Wahoo Creek.	+800	+801	
Tributary 1 to Persimmon Creek.	At confluence with Persimmon Creek	+868	+866	Coweta County (Uninc. Areas).
	Approximately 120 feet upstream of confluence with Permission Creek.	+867	+866	
Tributary 1 to Snake Creek	At confluence with Snake Creek	+874	+873	City of Newman.
	Approximately 40 feet upstream of confluence with Snake Creek.	+874	+873	
Tributary 2 to Mineral Spring Branch.	At confluence with Mineral Spring Branch	+831	+830	Coweta County (Uninc. Areas).
	Approximately 780 feet upstream of Fourth Street	+831	+830	
Tributary 2 to Sandy Creek	At confluence with Tributary 3 to Sandy Creek	+792	+793	Coweta County (Uninc. Areas).
	Approximately 30 feet upstream of confluence with Tributary 3 to Sandy Creek.	+792	+793	
Tributary 2 to Shoal Creek	Approximately 500 feet upstream of confluence with Shoal Creek.	+838	+839	Coweta County (Uninc. Areas).
	Approximately 1,720 feet upstream of confluence with Shoal Creek.	+838	+839	
Tributary 3 to Shoal Creek	Approximately 140 feet upstream of confluence with Shoal Creek.	+853	+854	Coweta County (Uninc. Areas).
	Approximately 500 feet upstream of confluence with Shoal Creek.	+853	+854	
Tributary 3 to Wahoo Creek	Approximately 110 feet upstream of confluence with Tributary 2 to Wahoo Creek.	+867	+868	City of Newman
	Just downstream of Bullsboro Drive/State Highway 34	+868	+869	
Tributary 4 to Wahoo Creek	Approximately 100 feet upstream of confluence with Tributary 3 to Wahoo Creek.	+872	+873	City of Newman
	Approximately 650 feet upstream of confluence with Tributary 3 to Wahoo Creek.	+872	+873	
Tributary 6 to Wahoo Creek	At confluence with Tributary 2 to Wahoo Creek	+880	+881	City of Newman

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	Approximately 160 feet upstream of confluence with Tributary 2 to Wahoo.	+880	+881	
Tributary 9 to Wahoo Creek	At confluence with Wahoo Creek	+874	+875	City of Newman
	Approximately 600 feed upstream of confluence with Wahoo Creek.	+874	+875	
Tributary 10 to Wahoo Creek	Approximately 220 feet upstream of confluence with Wahoo Creek.	+881	+882	City of Newman
	Approximately 420 feet upstream of confluence with Wahoo Creek.	+881	+882	
Tributary 12 to Wahoo Creek	At confluence with Wahoo Creek	+893	+891	City of Newman
	Approximately 270 feet upstream of confluence with Wahoo Creek.	+895	+896	

+North American Vertical Datum

ADDRESSES

City of Newnan

Maps are available for inspection at the Community Map Repository, 25 LaGrange Street, Newnan, GA.

Send comments to The Honorable L. Keith Brady, Mayor, City of Newnan, 25 LaGrange Street, Newnan, GA 30263.

Coweta County (Unincorporated Areas):

Maps are available for inspection at the Community Map Repository, 22 East Broad Street, Newnan, GA.

Send comments to The Honorable Larry DeMoss, Chairman, Coweta County Commissioners, 22 East Broad Street, Newnan, GA 30263.

DeKalb County, Indiana and Incorporated Areas

Cedar Creek	County Road 31	+895	+894	DeKalb County (Uninc. Areas).
	County Road 35 (near County Road 36 Intersection)	+868	+867	
Cedar Creek	Approximately 1,730 feet upstream of East First Street (Corporate Limits).	+861	+860	City of Auburn.
	CSX Railroad	+852	+851	
	Approximately 1,200 feet downstream of CSX Railroad (Corporate Limits).	+851	+849	
Cedar Creek	Center Street	+889	+888	Town of Waterloo.
	County Road 28	+881	+879	
St. Joe River	County Route 64	+798	+797	DeKalb County (Uninc. Areas).
	County Route 68	+794	+793	

+North American Vertical Datum

ADDRESSES

DeKalb County (Unincorporated Areas)

Maps available for inspection at DeKalb County Plan Commission, 301 South Union Street., Auburn, Indiana 46706.

Send comments to Sally Rowe, Zoning Administrator, 301 S. Union St., Auburn, Indiana 46706.

Town of Hamilton

Maps available for inspection at the Zoning Administrator's Office, 7750 South Wayne Street, Hamilton, Indiana 46742.

Send comments to Keith Smith, Zoning Administrator, 7750 South Wayne Street, Hamilton, Indiana 46742.

City of Auburn

Maps available for inspection at the Building, Planning and Development Department, 210 Cedar St., Auburn, Indiana.

Send comments to Bill Spohn, Administrator, Building, Planning and Development, 210 Cedar St., P.O. Box 506, Auburn, Indiana 46706.

City of Butler

Maps available for inspection at Butler City Utility Office, 201 South Broadway, Butler, Indiana.

Send comments to Amy Schweitzer, City Planner, 201 South Broadway, Butler, Indiana 46721.

City of Garrett

Maps available for inspection at Garrett Planning Department, 130 South Randolph St., Garrett, Indiana.

Send comments to Steve Bingham, Planning Director, City of Garrett, P.O. Box 332, Garrett, Indiana 46738.

Maps available for inspection at Corunna Town Hall, 102 N. Bridge St., Corunna, Indiana.

Send comments to Cassandra Lynch, Clerk Treasurer, 102 N. Bridge St., P.O. Box 62, Corunna, Indiana 40730.

Town of Waterloo

Maps available for inspection at Town Hall, 280 N. Wayne Street, Waterloo, Indiana.

Send comments to DeWayne Nodine, 280 N. Wayne Street, P.O. Box 96, Waterloo, Indiana 46793.

Town of St. Joe

Maps available for inspection at St. Joe Town Hall, 102 Third St., St. Joe, Indiana.

Send comments to Laura Spuller, Clerk Treasurer, 102 Third St., P.O. Box 293, St. Joe, Indiana 46785.

Town of Ashley

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Maps available for inspection at Town Clerk-Treasurer's Office, 500 S. Gonser Ave., Ashley, Indiana.
Send comments to Don Farrington, Town Superintendent, Town of Ashley, P.O. Box 70, Ashley, Indiana 46705.

Town of Altona

Maps available for inspection at Town Clerk-Treasurer's Office, 1202 W. Quincy St., Garrett, Indiana.
Send comments to Max Milks, Clerk-Treasurer, 1202 W. Quincy St., Garrett, Indiana 46738.

Calcasieu Parish, Louisiana and Incorporated Areas

Bayou Contraband	At the confluence of Bayou Contraband and Calcasieu River.	*9.4	*9.5	City of Lake Charles.
	Approximately 500 feet upstream from Tom Herbert Road.	None	*13.7	
East Branch Bayou Contraband.	At the Confluence of Bayou Contraband and East Branch Bayou.	*13.5	*9.5	Calcasieu Parish (Uninc. Areas) and City of Lake Charles.
	Approximately 750 feet downstream from Fontenot Drive.	*17.5	*14	
South Branch Bayou Contraband.	At the confluence of South Branch of Bayou Contraband and Bayou Contraband.	*10.5	*9	City of Lake Charles.
	At the intersection of Central Parkway and Greenway.	None	*14	

*National Geodetic Vertical Datum

Unincorporated Areas of Calcasieu Parish

Maps are available for inspection at the Planning and Development Department, 1015 Pithon Street, Lake Charles, LA, 70601.
Send comments to Honorable Hal McMillian, President of Calcasieu Parish, 1015 Pithon Street, Lake Charles, LA, 70601.

City of Lake Charles

Maps are available for inspection at the Seventh Floor of City Hall, 326 Pujo Street, Lake Charles, LA 70761.
Send comments to Honorable Randy Roach, Mayor of the City of Lake Charles, 326 Pujo Street, Lake Charles, LA, 70761.

Berrien County, Michigan and Incorporated Areas

Bedortha Drain	Just downstream of Lake Street	*615	*617	City of Bridgman.
	250 feet upstream of Railroad	None	*637	
Bridgman City Drain	Confluence of Bedortha Drain	*623	*627	City of Bridgman .
	Approximately 1,250 feet upstream of Railroad	None	*644	
Bridgman Drain Tributary	Confluence with Bridgman City Drain	*630	*631	City of Bridgman.
	Approximately 370 feet downstream of Railroad	*631	*632	
Lake Michigan	Shoreline for entire county	*584	*585	Benton Township, Benton Harbor, Bridgman, Chikaming Township, Grand Beach, Hagar Township, Lake Township, Lincoln Township, Michiana, New Buffalo, New Buffalo Township, Shoreham, St. Joseph.
Tanner Creek	Confluence with Lake Michigan	*584	*585	City of Bridgman.
	Confluence with Bedortha Drain	*610	*617	
William & Esseg Drain	Confluence with Tanner Creek	*610	*617	City of Bridgman.
	Bridgman City Limit	*629	*630	

*National Geodetic Vertical Datum

ADDRESSES

City of Benton Harbor

Maps are available for inspection at-Benton Harbor City Hall, 200 E. Wall Street, Benton Harbor, Michigan 49023.
Send comments to Wilce L. Cooke, 200 E. Wall Street., Benton Harbor, Michigan 49023.

Benton Township

Maps are available for inspection at Inspection Department-Benton Township, 1725 Territorial Road, Benton Harbor, MI 49022.
Send comments to Ron Fergeson, Supervisor, 1725 Territorial Road, Benton Harbor, Michigan 49022.

City of Bridgman

Maps are available for inspection at Bridgman City Hall, 9765 Maple Street Bridgman, Michigan 49106.
Send comments to Ron Birmingham, 9765 Maple Street Bridgman, Michigan, 49106.

Chikaming Township

Maps are available for inspection at Chikaming Township, 14900 Lakeside Road, Lakeside, Michigan 49116.
Send comments to Nan Zimmerman, Supervisor, 14900 Lakeside Road, or P.O. Box 305, Lakeside, Michigan 49116.

Village of Grand Beach

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Maps are available for inspection at Village Office of Grand Beach, 48200 Perkins Boulevard, Grand Beach, Michigan 49117.

Send comments to James Bracewell, President, 48200 Perkins Boulevard, Grand Beach, Michigan 49117.

Hagar Township

Maps are available for inspection at Hager Township Hall, 3900 Riverside, Riverside, Michigan 49084.

Send comments to Eugene Jarvis, 3900 Riverside, Riverside, Michigan, 49084.

Lake Township

Maps are available for inspection at Lake Township Hall, 3220 Shawnee Road, Bridgman, Michigan 49106.

Send comments to Loren Berndt, 3220 Shawnee Road or P.O. Box 818, Bridgman, Michigan 49106.

Lincoln Township

Maps are available for inspection at 2055 West John Beers Road, Stevensville, Michigan 49127.

Send comments to Dick Stauffer, Supervisor, 2055 West John Beers Road, Stevensville, Michigan 49127.

Village of Michiana

Maps are available for inspection at Village of Michiana, 4000 Cherokee Drive, Michiana, Michigan 49117.

Send comments to Ellen Fiedler, President, 4000 Cherokee Drive, Michiana, Michigan 49117.

City of New Buffalo

Maps are available for inspection at City Clerks Office-New Buffalo City Hall, 224 West Buffalo Street, New Buffalo, Michigan 49117.

Send comments to Jack Kennedy, 224 West Buffalo Street, New Buffalo, Michigan 49117.

New Buffalo Township

Maps are available for inspection at Town Hall-New Buffalo Township, 17425 Red Arrow Highway, New Buffalo, Michigan 49117.

Send comments to Agnes Conway, Supervisor, 17425 Red Arrow Highway, New Buffalo, Michigan 49117.

Village of Shoreham

Maps are available for inspection at St. Joseph Town Hall-Building & Zoning Department, 3000 Washington Avenue, St. Joseph, Michigan 49085.

Send comments to Lawrence Larson, President, 2862 Garden Lane, West St. Joseph, Michigan 49085.

City of St. Joseph

Maps are available for inspection at City of St. Joseph, 700 Broad Street, St. Joseph, Michigan 49085.

Send comments to Frank Walsh, 700 Broad Street, St. Joseph, Michigan 49085.

Macomb County, Michigan and Incorporated Areas

Auvase Creek	Approximately 80 feet downstream of Graham Drive.	+581	+583	Chesterfield Township.
	*Approximately 1,600 feet upstream of Farm Road.	None	+593	
Crapaud Creek	Approximately 320 feet upstream of Perrin Street.	+579	+581	City of New Baltimore.
	Approximately 1,100 feet upstream of Ashley Street.	+585	+586	
East Pond Creek	100 feet downstream of Grand Trunk Western Railroad..	None	+751	Bruce Township.
	At 34 Mile Road.	None	+884	
North Branch Clinton River	9,100 feet downstream of 23 Mile Road.	None	+601	Macomb Township,
	At Boardman Road	None	+784	Ray Township, Bruce Township.
Lake St. Clair	Entire Shoreline	+578	+579	Harrison Township, St. Clair Shores, Lake Township.
Anchor Bay	Entire Shoreline	+578	+580	City of New Baltimore, Chesterfield Township, Harrison Township.

+North American Vertical Datum

ADDRESSES

Macomb County (Unincorporated Areas)

Maps are available for inspection at Department of Planning & Economic Development, 1 South Main Street, 7th Floor Planning, Mount Clements, Michigan 48043.

Send comments to Jeff W. Schroeder, AICP, Department of Planning & Economic Development, 1 South Main Street, 7th Floor Planning, Mount Clements, Michigan 48043.

Armada Township

Maps are available for inspection at 23121 East Main Street, Armada, Michigan 48005.

Send comments to Bonnie Krauss, Zoning Officer, 23121 East Main Street, Armada, Michigan 48005.

Bruce Township

Maps are available for inspection at Township Hall, 223 East Gates Street, Romeo, Michigan 48065.

Send comments to Gary C. Schocke, Supervisor, 223 East Gates Street, Romeo, Michigan 48065.

Chesterfield Township

Maps are available for inspection at Township Office, 47275 Sugarbush Road, Chesterfield Township, Michigan, 48047.

Send comments to Jim Ellis, Supervisor, 47275 Sugarbush Road, Chesterfield Township, Michigan 48047.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

City of Fraser

Maps are available for inspection at Building Department, 33000 Garfield Road, Fraser, Michigan, 48026.

Send comments to Jeff W. Bremer, City Manager, 33000 Garfield Road, Fraser, Michigan 48026.

City of Memphis

Maps are available for inspection at City Hall, 35095 Potter Street, Memphis, Michigan 48041.

Send comments to Barton Dunsmore, Superintendent, 35095 Potter Street, Memphis, Michigan 48041.

City of Mount Clemens

Maps are available for inspection at Community Development Department, One Crocker Boulevard, Mount Clemens, Michigan 48043.

Send comments to Honorable Quinnie Cody, Mayor, City of Mount Clemens, One Crocker Boulevard, Mount Clemens, Michigan 48043.

City of New Baltimore

Maps are available for inspection at Project Control Engineering, 36535 Green Street, New Baltimore, Michigan 48047.

Send comments to Honorable Joe Grajek, Mayor, City of New Baltimore, 36535 Green Street, New Baltimore, Michigan 48047.

City of Sterling Heights

Maps are available for inspection at Sterling Heights City Hall, 40555 Utica Road, Sterling Heights, Michigan 48311.

Send comments to Honorable Richard Notte, Mayor, City of Sterling Heights, 40555 Utica Road, Sterling Heights, Michigan 48311.

City of Utica

Maps are available for inspection at City of Utica Administration Offices, 7550 Auburn Road, Utica, Michigan 48317.

Send comments to Honorable Jacqueline Noonan, Mayor, City of Utica, 7550 Auburn Road, Utica, Michigan 48317.

City of Warren

Maps are available for inspection at Building Division, 29500 Van Dyke, Warren, Michigan 48093.

Send comments to Honorable Mark Steenbergh, Mayor, City of Warren, 29500 Van Dyke, Warren, Michigan 48093.

Clinton Township

Maps are available for inspection at Planning & Community Development, 40700 Romeo Plank Road, Clinton Township, Michigan 48038.

Send comments to Robert Cannon, Supervisor, 40700 Romeo Plank Road, Clinton Township, Michigan 48038.

Harrison Township

Maps are available for inspection at Building Department, 38151 L'Anse Creuse Road, Harrison Township, Michigan 48045–1996.

Send comments to Anthony G. Forlini, Supervisor, 38151 L'Anse Creuse Road, Harrison Township, Michigan 48045–1996.

Maps are available for inspection at Village of Grosse Pointe Hall, 795 Lake Shore Road, Grosse Pointe Shores, Michigan 48236.

Send comments to Richard F. Fox, Supervisor, 795 Lake Shore Road, Grosse Pointe Shores, Michigan 48236.

Lenox Township

Maps are available for inspection at Office of the Supervisor, John P. Gardner, 63975 Gratiot Avenue, Lenox, Michigan 48050.

Send comments to John P. Gardner, 63975 Gratiot Avenue, Lenox, Michigan 48050.

Macomb Township

Maps are available for inspection at Macomb Township Building Department, 54111 Broughton Road, Macomb, Michigan 48042.

Send comments to John D. Brennan, Supervisor, 54111 Broughton Road, Macomb, Michigan 48042.

Ray Township

Maps are available for inspection at Township Hall, 64255 Wolcott Road, Ray, Michigan 48062.

Send comments to Charles Bohm, Supervisor, 64255 Wolcott Road, Ray, Michigan 48062.

Richmond Township

Maps are available for inspection at Township Office, 34900 School Section Road, Richmond, Michigan 48062.

Send comments to Keith Rengert, Supervisor, 34900 School Section Road, Richmond, Michigan 48062.

Shelby Township

Maps are available for inspection at 52700 Van Dyke Avenue, Shelby Township, Michigan 48316.

Send comments to Ralph Maccarone, Supervisor, 52700 Van Dyke Avenue, Shelby Township, Michigan 48316.

St. Claire Shores

Maps are available for inspection at Community Development and Inspection Department, 27600 Jefferson Circle Drive, St. Claire Shores, Michigan 48081.

Send comments to Kenneth Podolski, City Manager, 27600 Jefferson Circle Drive, St. Clair Shores, Michigan 48081.

Village of Armada

Maps are available for inspection at Village of Armada, 74274 Burk, Armada, Michigan 48005.

Send comments to President Nancy W. Parmenter, Village President, 74274 Burk, Armada, Michigan 48005.

Village of New Haven

Maps are available for inspection at Village of New Haven, 58725 Havenridge Road, New Haven, Michigan 48048.

Send comments to Michael L. Kras, Building Official, 58725 Havenridge Road, New Haven, Michigan 48048.

Village of Romeo

Maps are available for inspection at Village Clerk Office, 121 West Saint Clair Street, Romeo, Michigan 48065.

Send comments to Paul Reiz, President, 121 West Saint Clair Street, Romeo, Michigan 48065.

Washington Township

Maps are available for inspection at Assessing Department, 57900 Van Dyke Avenue, Washington, Michigan 48094.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Send comments to Gary Kirsh, Supervisor, 57900 Van Dyke Avenue, Washington, Michigan 48094.				
Oakland County, Michigan and Incorporated Areas				
Clinton River (near Grand Trunk Western R.R. and Maceday Lake).	Approximately 360 feet downstream of I–75	*1,012	+1,010	Township of Independence and City of the Village of Clarkston.
	Approximately 70 feet upstream of Dixie Highway	*975	+973	
Clinton River (near Sylvan Lake).	Approximately 3,100 feet upstream of Cooley Lake Rd.	*935	+934	Charter Township of Waterford, Township of West Bloomfield, City of Keego Harbor, and City of Pontiac.
	Upstream side of Dawson Millpond Dam	*931	+928	
Clinton River (near Grand Trunk Western R.R. and Galloway Creek).	Approximately 700 feet downstream of Squirrel Road	*845	+844	City of Auburn Hills.
	Approximately 50 feet upstream of Hamilin Road	*840	+837	
Duck Creek	Approximately 40 feet downstream of Ortonville Rd. (2nd crossing).	None	+941	Village of Ortonville.
	At confluence with Kearsley Creek.	None	+930	
Huron River	Approximately 1,600 feet upstream of Monteagle St.	None	+904	Village of Milford.
	Approximately 1,900 feet downstream of Peters St.	None	+902	
Kearsley Creek	Approximately 20 feet downstream of Granger Road	None	+941	Village of Ortonville.
	Approximately 10 feet upstream of Oakwood Road	None	+924	
Norton Creek	Approximately 3,800 feet downream of 1-96	None	+927	City of Wixom.
	Approximately 1,900 feet upream of Buno Road	None	+907	
Pebble Creek	Approximately 60 feet upream of Drakeshire Dr.	None	+949	Township of We Bloomfield.
	Approximately 30 feet upream of 14 Mile Road	*893	+892	
Pettibone Creek	Approximately 2,000 feet upream of Summit eb +930.	None	+949	Village of Milford.
	At confluence with Huron River	None	+902	
Quarton Branch	Approximately 160 feet downstream of Redding Street.	*746	+747	City of Birmingham.
	Upstream side of Quarton Lake Dam	*736	+737	
Sargent Creek	Approximately 150 feet downstream of Heritage Hills Manor.	None	+968	City of Rochester Hills.
	Approximately 130 feet downstream of Adams Road	None	+941	
Hummer Lake		None	+1,050	Township of Brandon.
Seymour Lake		None	+1,042	Township of Brandon.
Lake Louise		None	+965	Township of Brandon
Bald Eagle		None	+970	Township of Brandon.
Square Lake		None	+992	Township of Orion
Elkhorn Lake		None	+987	Township of Orion.
Tommys Lake		None	+987	Township of Orion.
Round Lake		None	+986	Township of Orion.
Lake Sixteen		None	+986	Township of Orion.
Voorheis Lake		None	+984	Town of Orion.
Judah Lake		None	+990	Township of Orion.
Lonesome Lake		None	+998	Township of Orion.
Long Lake		None	+968	Township of Orion.
Bunny Run Lake		None	+967	Township of Orion.
Buckhorn Lake		None	+989	Township of Orion.
Greens Lake		None	+998	Township of Orion.
Dark Lake		None	+1,001	Township of Orion.
Deer Lake		*975	+973	Township of Independence and City of the Village of Clarkston
Parke Lake		*991	+991	Township of Independence and City of the Village of Clarkston
Middle Lake		*975	+973	Township of Independence and City of the Village of Clarkston.
Mill Lake	Downstream of Miller Road	*1,000	+1,000	Township of Independence and City of the Village of Clarkston.
	Upstream of Miller Road	None	+1,002	Independence and City of the Village of Clarkston.
Mill Lake	Approximately 10 feet downstream of Baldwin Road	None	+983	Township of Orion.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	Approximately 1,700 feet downstream of Waldon Road.	None	+981	
Lake Orion		*987	+987	Village of Lake Orion and Township of Orion.
Sylvan Lake		*931	+929	City of Keego Harbor, City of Pontiac, City of Sylvan Lake, and Charter Township of Waterford.
Cass Lake		*932	+931	City of Keego Harbor, Township of West Bloomfield, Charter Township of Waterford, and City of Orchard Lake Village.
Dawson Mill Road		*932	+929	City of Pontiac.
Otter Lake		*931	+929	Charter Township of Waterford.

+North American Vertical Datum
*National Geodetic Vertical Datum

ADDRESSES

Oakland County

Maps available for inspection at *http://www.co.oakland.mi.us/oss/*

Send comments to Sudha Maheshwari, GIS Project Manager, 1200 North Telegraph Rd., Building 49 West, Pontiac, MI 48341.

Addison Township

Maps are available for inspection at Addison Township, 1440 Rochester Road, Leonard, MI.

Send comments to A. Robert Koski, Supervisor, 1440 Rochester Road, Leonard, MI 48367.

Bloomfield Township

Maps are available for inspection at Water Department, 4200 Telegraph Road, Bloomfield Hills, MI 48302.

Send comments to Wayne Domine, P.E., Superintendent, Water Department, 4200 Telegraph Road, Bloomfield Hills, MI 48302.

Brandon Township

Maps are available for inspection at Building Department, Brandon Township, 395 Mill Street, Ortonville, MI 48462.

Send comments to Tim Palulian, Community Development Director, 395 Mill Street, Ortonville, MI 48462.

City of Auburn Hills

Maps are available for inspection at Clerk's Office, 1827 North Squirrel Road, Auburn Hills, MI 48326.

Send comments to Shawn Keenan, Storm Water Resources Manager, 1827 N. Squirrel Road, Auburn Hills, MI 48326.

City of Birmingham

Maps are available for inspection at Municipal building, 151 Martin Street, Birmingham, MI 48012.

Send comments to Paul T. O'Meara, Assistant Director of Engineering, 151 Martin Street, Birmingham, MI 48012.

City of Bloomfield Hills

Maps are available for inspection at City of Bloomfield Hills, 45 East Long Lake Road, Bloomfield Hills, MI 48304.

Send comments to David Piche, City Manager, 45 East Long Lake Road, Bloomfield Hills, MI 48304.

City of Farmington

Maps are available for inspection at Public Service Department, 33720 West Nine Mile Road, Farmington, MI 48335.

Send comments to Kevin Gushman, Director of Public Services, 33720 West Nine Mile Road, Farmington, MI 48335.

City of Farmington Hills

Maps are available for inspection at City of Farmington Hills Engineering, 31555 West Eleven Mile Road, Farmington Hills, MI.

Send comments to William Otwell, Jr., City Engineer, 31555 West Eleven Mile Road, Farmington Hills, MI 48336.

City of Keego Harbor

Maps are available for inspection at Keego Harbor City Hall, 2141 Cass Lake Road, Suite # 101, Keego Harbor, MI 48320.

Send comments to John Baczynski, Community Development Director, 2141 Cass Lake Road, Suite #101, Keego Harbor, MI 48320.

City of Lake Angelus

Maps are available for inspection at City Hall, 45 Gallogly Road, Lake Angelus, MI 48326.

Send comments to Heidi Hoyles, Planning Commissioner Flood Management, 104 Gallogly Road, Lake Angelus, MI 48326.

City of Northville

Maps are available for inspection at City Hall, 215 West Main Street, Northville, MI.

Send comments to Richard Starling, Building Official, 215 West Main Street, Northville, MI 48167.

City of Orchard Lake Village

Maps are available for inspection at City Hall, 3955 Orchard Lake Road, Orchard Lake, MI.

Send comments to Janet Overholt Green, Manager, 3955 Orchard Lake Road, Orchard Lake, MI 48323.

City of Pontiac

Maps are available for inspection at City Engineering Department, 55 Wessen Street, Pontiac, MI and Community Development Office, 1200 Featherstone Road, Pontiac, MI.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Send comments to Allan Schneck, City Engineer, 55 Wessen Street, Pontiac, MI 48341.

City of Rochester

Maps are available for inspection at City Hall, 400 Sixth Street, Rochester, MI.

Send comments to Edward Alward, Building Inspector, 400 Sixth Street, Rochester, MI 48307.

City of Rochester Hills

Maps are available for inspection at Department of Public Safety/Engineering Department, 1000 Rochester Hills Drive, Rochester Hills, MI 48309.

Send comments to Scott Cope, Building Inspector, 1000 Rochester Hills Drive, Rochester Hills, MI 48309.

City of South Lyon

Maps are available for inspection at City of South Lyon, 335 South Warren Street, South Lyon, MI.

Send comments to Rodney L. Cook, City Manager, 335 South Warren Street, South Lyon, MI 48178.

City of Southfield

Maps are available for inspection at Engineering Department, 26000 Evergreen Road, Southfield, MI.

Send comments to Brandy Bakita, Stormwater Coordinator, 26000 Evergreen Road, Southfield, MI 48076.

City of Sylvan Lake

Maps are available for inspection at City Hall, 1820 Inverness Street, Sylvan Lake, MI.

Send comments to John Martin, Manager, 1820 Inverness Street, Sylvan Lake, MI 48320.

City of The Village of Clarkston

Maps are available for inspection at City Office, 375 Depot Road, Clarkston, MI.

Send comments to Art Pappas, City Manager, 375 Depot Road, Clarkston, MI 48346.

City of Troy

Maps are available for inspection at Engineering Department, 500 West Big Beaver Road, Troy, MI 48084.

Send comments to Neal Schroeder, P.E., Civil Engineer, 500 West Big Beaver Road, Troy, MI 48084.

City of Walled Lake

Maps are available for inspection at City Hall, 1499 East West Maple Road, Walled Lake, MI 48390.

Send comments to Lloyd Cureton, 1499 East West Maple Road, Walled Lake, MI 48390.

City of Wixom

Maps are available for inspection at Building Department, 49045 Pontiac Tr., Wixom, MI.

Send comments to John Lipchik, Building Official, 49045 Pontiac Tr., Wixom, MI 48393.

Commerce Township

Maps are available for inspection at Commerce Building Department, 2840 Fisher Avenue, Commerce, MI 48390.

Send comments to Jeff Bowdell, Building Official, 2840 Fisher Avenue, Commerce, MI 48390.

Groveland Township

Maps are available for inspection at 4695 Grange Hall Road, Holly, MI.

Send comments to Judy Schulte, Zoning Administrator, 4695 Grange Hall Road, Holly, MI 48442.

Highland Township

Maps are available for inspection at Charter Township of Highland Planning Department, 205 North John Street, Highland, MI.

Send comments to Lisa G. Burkhart, AICP, Zoning Administrator, 205 North John Street, Highland, MI 48357.

Holly Township

Maps are available for inspection at Holly Township Hall, 102 Civic Drive, Holly, MI.

Send comments to Dale M. Smith, Supervisor, 102 Civic Drive, Holly, MI 48442.

Independence Township

Maps are available for inspection at Assessing Department and Building Department, Independence Township 90 North Main Street, Clarkston, MI 48346.

Send comments to David Belcher, Building Department, 90 North Main Street, Clarkston, MI 48346.

Lyon Township

Maps are available for inspection at Giffels-Webster Engineers, Inc., 2871 Bond Street, Rochester Hills, MI 48309 and Charter of Lyon, 58000 Grand River Avenue, New Hudson, MI 48309.

Send comments to Jason Mayer, Project Engineer, Giffels-Webster Engineers, Inc., 2871 Bond Street, Rochester Hills, MI 48309.

Milford Township

Maps are available for inspection at Supervisors Office, 1100 Atlantic, Milford, MI 48381.

Send comments to Donald D. Green, Supervisors Office, 1100 Atlantic, Milford, MI 48381.

Novi Township:

Maps are available for inspection at 4425 Chedworth Drive, Northville, MI 48167.

Send comments to Raymond Schovers, Supervisors, 4425 Chedworth Drive, Northville, MI 48167–8939.

Oakland Township

Maps are available for inspection at Township Hall, 4393 Collins Road, Rochester, MI 48306.

Send comments to Bill Benoit, Building Director, 4393 Collins Road, Rochester, MI 48306.

Orion Township

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Maps are available for inspection at Supervisors Office, 2525 Joslyn Road, Lake Orion, MI 48360.
Send comments to Gerald A. Dywasuk, Supervisors Office, 2525 Joslyn Road, Lake Orion, MI 48360.

Rose Township

Maps are available for inspection at Rose Township Hall, 204 Franklin Street, Holly, MI 48442.
Send comments to Dave Schang, Building Official, 204 Franklin Street, Holly, MI 48442.

Southfield Township

Maps are available for inspection at Township Hall, 18550 West Thirteen Mile Road, Southfield Township, MI 48025.
Send comments to Sharon Tischler, Clerk, 18550 West Thirteen Mile Road, Southfield Township, MI 48025.

Village of Beverly Hills

Maps are available for inspection at Village of Beverly Hills, 18500 West Thirteen Mile Road, Beverly Hills, MI 48025.
Send comments to Renzo Spallasso, Engineer, 18500 West Thirteen Mile Road, Beverly Hills, MI 48025.

Village of Bingham Farms:

Maps are available for inspection at 24255 West Thirteen Mile Road, Suite 190, Bingham Farms, MI 48025.
Send comments to Kathryn Hagaman, Clerk, 24255 West Thirteen Mile Road, Suite 190, Bingham Farms, MI 48025.

Village of Franklin

Maps are available for inspection at Village Hall, 32325 Franklin Road, Franklin, MI 48025.
Send comments to Bill Dinnan, Building Official, 32325 Franklin Road, Franklin, MI 48025.

Village of Holly

Maps are available for inspection at Clerk-Treasurer, 202 South Saginaw Street, Holly, MI 48442.
Send comments to Marsha Powers, Clerk "Treasurer, 202 South Saginaw Street, Holly, MI 48442.

Village of Lake Orion

Maps are available for inspection at Village of Orion, 37 East Flint Street, Lake Orion, MI 48362.
Send comments to Jo Ann Tassel, Manager, 37 East Flint Street, Lake Orion, MI 48362.

Village of Milford

Maps are available for inspection at Village Clerk, Ann Collins, 1100 Atlantic Street, Milford, MI 48381.
Send comments to Randy Sapelak, Building and Zoning Official, 1100 Atlantic Street, Milford, MI 48381.

Village of Ortonville

Maps are available for inspection at 476 Mill Street, Ortonville, MI 48462.
Send comments to Paul C. Zelenak, Manager, 476 Mill Street, Ortonville, MI 48462.

Village of Wolverine Lake

Maps are available for inspection at Village Hall, 425 Glengary Road, Wolverine Lake, MI 48390.
Send comments to Timothy Brandt, Building Inspector, 425 Glengary Road, Wolverine Lake, MI 48390.

Waterford Township

Maps are available for inspection at Building and Engineering Department, 5200 Civic Center Drive, Waterford, MI 48329.
Send comments to Stacy St. James, Environmental Coordinator, Engineering Department, 5200 Civic Center Drive, Waterford, MI 48329.

West Bloomfield Township

Maps are available for inspection at West Bloomfield Township, 4550 Walnut Lake Road, West Bloomfield, MI 48325.
Send comments to David Flaisher, Supervisor, 4550 Walnut Lake Road, West Bloomfield, MI 48325.

White Lake Township

Maps are available for inspection at Township Hall, Building Department, 7525 Highland Road, White Lake, MI 48383.
Send comments to Mike Kowall, Supervisor, 7525 Highland Road, White Lake, MI 48383.

Barry County, Missouri and Incorporated Areas

Unnamed Tributary No. 1	Just upstream of the confluence with Flat Creek	*1,309	+1,309	Barry County (Uninc. Areas) and
	Approximately 2,325 upstream of Highway 248	*1,320	+1,320	City of Cassville.
Town Branch	Approximately 750 feet downstream of Main Street	*1,308	+1,308	City of Cassville.
	Approximately 2,950 feet upstream of County House Road.	*1,350	+1,350	
Brock Branch	Just upstream of the confluence with Flat Creek	*1,310	+1,310	City of Cassville.
	Approximately 1,535 feet upstream of the confluence with Flat Creek.	*1,318	+1,319	
Hawk Branch	Approximately 1,220 feet downstream of Presley Drive.	*1,320	+1,321	City of Cassville.
	Approximately 160 feet upstream of Oak Hill Drive	*1,337	+1,338	
Flat Creek	Approximately 1,500 feet downstream of Thirteenth Street.	*1,297	+1,298	Barry County (Uninc. Areas) and City of Cassville.
	Approximately 3,100 feet upstream of County Bridge	*1,319	+1,320	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Chapel Drain	Just upstream of the confluence with Kelly Creek	None	+1,328	Barry County (Uninc. Areas) and City of Monett.
	At the intersection of City of Chapel Drain and Cleveland Street (Highway 60).	None	+1,334	
Clear Creek	Approximately 850 feet downstream of the confluence with Unnamed Tributary.	None	+1,245	Barry County (Uninc. Areas) and City of Monett.
	Approximately 225 feet Monett upstream of Farm Road 1090.	None	+1,345	
Kelly Creek	Approximately 300 feet downstream of Dairy Street	*1,284	+1,290	Barry County (Uninc. Areas) and City of Monett.
	Approximately 4,850 City of feet upstream of Chapel Drive.	None	+1,353	
Unnamed Tributary	Just upstream of the confluence with Clear Creek	None	+1,250	Barry County (Uninc. Areas) and City of Monett.
	Approximately 1,440 feet upstream of Highway 37	None	+1,350	
Kelly Creek Tributary	Just upstream of the confluence with Clear Creek	None	+1,303	City of Monett.
	Approximately 3,700 feet upstream of Cleveland Street.	None	+1,366	
Boys Drain	Just upstream of the confluence with Unnamed Tributary.	None	+1,298	City of Monett.
	Approximately 220 feet upstream of the Sixth Street	None	+1,338	

*National Geodetic Vertical Datum
+North American Vertical Datum

ADDRESSES

Barry County (Unincorporated Areas)

Maps are available for inspection at the County Courthouse, 700 Main Street, Cassville, MO 65625.

Send comments to the Honorable Cherry Warren, Presiding Commissioner, Barry County, 700 Main Street, Suite 2, Cassville, MO 65625.

City of Monett

Maps are available for inspection at City Hall, 217 Fifth Street, Monett, MO 65708.

Send comments to the Honorable James Orr, Mayor, City of Monett, P.O Box 110, Monett, MO 65708.

City of Cassville

Maps are available for inspection at City Hall, 300 Main Street, Cassville, MO 65625.

Send comments to the Honorable Jim Craig, Mayor, City of Cassville, 300 Main Street, Cassville, MO 65625.

Harris County, Texas and Incorporated Areas

Adlong Ditch	Approximately 100 feet downstream of Peters Road	None	+62	Harris County (Uninc. Areas).
	At confluence with Cedar Bayou	None	+42	
Armand Bayou	Approximately 1,500 feet upstream of Nasa Road	*11	+12	Harris County (Uninc. Areas) and City Of Pasadena
	Approximately 200 feet downstream of Oleander Drive.	*30	+30	
B112–02–00 Interconnect	At confluence with B112–02–00	None	+20	City of La Porte.
	At confluence with Spring Gully	None	+17	
Bear Creek	Approximately 3,500 feet downstream of Katy Hockley Cut-Off Road.	*161	+160	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Langham Creek	*104	+101	
Beltway 8 Outfall Ditch	Approximately 1,300 feet downstream of Fallbrook Road.	None	+106	Harris County (Uninc. Areas)
	At confluence with White Oak Bayou	*102	+99	
Bender Lake & Continuation of Bender Lake.	Approximately 900 feet downstream of Dry Spring Lane.	None	+104	Harris County (Uninc. Areas)
	At confluence with Spring Creek	*89	+90	
Bens Branch	Approximately 300 feet upstream of Northpark Drive	*73	+73	City of Houston, Harris County (Uninc. Areas)
	At confluence with West Fork San Jacinto River	*50	+50	
Bering Ditch	Approximately at Olympic Circle	*59	+52	City of Houston.
	At confluence with Buffalo Bayou	*56	+52	
Berry Bayou	600 feet upstream of Evalyn Wilson Park	*35	+34	City of Houston and City of South Houston.
	At confluence with Sims Bayou	*17	+21	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Berry Creek (and Unnamed Tributary to Berry Creek).	200 feet downstream of Wingtip Drive	*42	+41	City of Houston.
	At confluence with Berry Bayou	*19	+21	
Big Gulch	Approximately 4,000 feet upstream of Beaumont Highway.	*44	+40	Harris County of (Uninc. Areas).
	At confluence with Greens Bayou	*24	+26	
Big Island Slough	Approximately 200 feet upstream of McCarthy Road	None	+23	Harris County (Uninc. Areas), City of Pasadena, and City of La Porte.
	At confluence with Armada Bayou	*12	+12	
Bintliff Ditch	Approximately 100 feet downstream of Bellaire Boulevard.	*65	+64	City of Houston.
	At confluence with Brays Bayou	*61	+61	
Blacks Branch	Approximately 500 feet upstream of Cantertrot Drive	*65	+66	Harris County (Uninc. Areas), and City of Humble.
	At confluence with West Fork San Jacinto River	*63	+61	
Boggs Gully	Approximately 900 feet upstream of Baker Drive	*184	+179	Harris County (Uninc. Areas) and City of Tomball.
	At confluence with Spring Creek	*151	+153	
Boggy Bayou	Approximately 300 feet upstream of Willowbend Drive	None	+30	City of Pasadena.
	At confluence with Buffalo Bayou-Houston Ship Channel.	None	+11	
Brays Bayou	Approximately 900 feet downstream of Vineyard Drive	*83	+85	Harris County of (Uninc. Areas) and City of Houston.
	At confluence with Ship Channel	*12	+12	
Briar Branch	Approximately 500 feet downstream of Blalock Road	*77	+75	City of Houston and of City of Spring Valley.
	At confluence with Spring Branch	*52	+48	
Brickhouse Gully	Approximately 500 feet upstream of Gessner Road	*101	+97	City of Houston.
	At confluence with White Oak Bayou	*68	+66	
Buffalo Bayou-Houston Ship Channel.	Approximately at Phelps Road	*12	+12	City of Houston.
	At confluence with San Jacinto River, Houston Ship Channel.	*11	+11	
Buffalo Bayou	Approximately 100 feet upstream of Highway 6	*80	+77	City of Houston and City of Piney Point Village.
	At confluence with Ship Channel	*12	+12	
Cane Island Branch	Approximately at Pitts Road	*159	+158	Harris County (Uninc. Areas).
	At confluence with Barker Dam	*98	+97	
Caney Creek	Approximately 3,000 feet upstream of Main Street (Extended).	*64	+63	City of Houston.
	At confluence with East Fork San Jacinto River	*56	+58	
Cannon Gully	Approximately 100 feet upstream of Kuykendahl Road (Uninc. Areas).	*139	+138	Harris County (Uninc. Areas).
	At confluence with Willow Creek	*130	+130	
Carpenter Bayou	Approximately 500 feet upstream of Beaumont Highway.	None	+39	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Ship Channel	*12	+12	
Cary Bayou	Approximately 2,500 feet upstream of Archer Road	*30	+29	Harris County (Uninc. Areas) and City of Baytown.
	At confluence with Cedar Bayou	*15	+14	
Cedar Bayou	Approximately 1,500 feet upstream of Huffman Eastgate Road.	*72	+71	Harris County (Uninc. Areas) and City of Baytown.
	At confluence with Galveston Bay	*12	+12	
Cedar Bayou Diversion Channel.	Approximately at Tri City Beach Road	*12	+12	Harris County (Uninc. Areas) and City of Baytown.
	At confluence with Galveston Bay	*12	+12	
Channel A to Cypress Creek	Approximately 1,500 feet upstream of Mason Road	*155	+156	Harris County (Uninc. Areas).
	At confluence with Channel A	*150	+149	
Channel D to Channel A to Cypress Creek.	Approximately 150 feet upstream of Edworthy Road	None	+170	Harris County (Uninc. Areas).

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Chimney Rock Diversion Channel.	At confluence with Channel A	*153	+154	City of Houston.
	Approximately 100 feet upstream of Benning Drive	*56	+57	
City Ditch	At confluence with Brays Bayou	*56	+56	City of Houston.
	Approximately 500 feet downstream of Bellaire Boulevard.	*69	+66	
Clawson Ditch	At confluence with Brays Bayou	*68	+65	Harris County (Uninc. Areas.).
	Approximately 200 feet downstream of FM 1942	None	+45	
Clear Creek	At confluence with Cedar Bayou	None	+34	Harris County (Uninc. Areas), City of Seabrook, City of El Lago, City of Houston, City of Nassau Bay, City of Pearland, and City of Webster.
	Approximately 2,000 feet downstream of Hiram Clarke Road.	*65	+64	
Clodine Ditch	At confluence with Galveston Bay	*18	+18	City of Houston.
	Approximately 7,000 feet upstream of Bridgecrest Court (Extended).	*91	+93	
Cole Creek	At confluence with Buffalo Bayou	*80	+77	Harris County (Uninc. Areas) and City of Houston.
	Approximately 100 feet upstream of Fisher Road	*103	+100	
Cotton Patch Bayou	At confluence with White Oak Bayou	*73	+70	City of Houston and City of Pasadena.
	Approximately at Railroad	*12	+14	
County	At confluence with Buffalo Bayou-Houston Ship Channel.	*12	+12	City of Pasadena and City of Deer Park.
	Approximately 100 feet upstream of Wisdom Drive	None	+32	
Cow Bayou	At confluence with Armand Bayou	None	+27	City of Houston and City of Webster.
	700 feet upstream of Camino Real Boulevard	*11	+12	
Cypress Creek	At confluence with Clear Creek	*11	+12	Harris County (Uninc. Areas).
	Approximately at Harris County Limit	*184	+185	
Dinner Creek	At confluence with Spring Creek	*76	+78	Harris County (Uninc. Areas).
	Approximately 3,000 feet upstream of Fry Road	*142	+142	
Dry Creek	At confluence with Langham Creek	*124	+119	Harris County (Uninc. Areas).
	Approximately 4,000 feet upstream of Cypresswood Drive.	None	+155	
Dry Gully	At confluence with Cypress Creek	*142	+140	Harris County (Uninc. Areas).
	Approximately 600 feet downstream of Spring Cypress Road.	*139	+137	
E. 13th St. Outfall Channel	At confluence with Cypress Creek	*113	+114	City of Deer Park.
	Approximately 700 feet downstream of Luella Lane	None	+25	
East Fork Goose Creek	At confluence with Patrick Bayou	None	+20	Harris County (Uninc. Areas) and City of Baytown.
	Approximately 500 feet downstream of South Road	*28	+25	
East Fork Mound Creek	At confluence with Goose Creek	*13	+15	Harris County (Uninc. Areas).
	Approximately at Highway 290	None	+270	
East Fork San Jacinto River	Approximately at Highway 6	*247	+248	Harris County (Uninc. Areas) City of Houston.
	Approximately 700 feet upstream of Huffman Cleveland Road.	*72	+72	
Faulkey Gully	At confluence with Lake Houston	*50	+50	Harris County (Uninc. Areas).
	Approximately 2,000 feet downstream of Telge Road	*158	+157	
Fondren Diversion Channel	At confluence with Cypress Creek	*123	+124	City of Missouri City and City of Houston.
	Approximately 900 feet upstream of Garden Road	*67	+65	
Gamers Bayou	At confluence with Brays Bayou	*61	+61	Harris County (Uninc. Areas), City of Humble, and City of Houston.
	Approximtely 600 feet downstream of Humble Westfield Road.	*90	+87	
Glenmore Ditch	At confluence with Greens Bayou	*57	+56	City of Houston and City of Pasadena.
	Approximately at Bond Street	*29	+27	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	At confluence with Buffalo Bayou-Houston Ship Channel.	*12	+12	
Goose Creek	Approximately 100 feet downstream of Barbers Hill Road.	*42	+42	Harris County (Uninc. Areas) and City of Baytown.
	At confluence with Ship Channel	*12	+12	
Greens Bayou	Approximately 400 feet downstream of Cope Land Road.	*130	+128	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Buffalo Bayou-Houston Ship Channel.	*12	+12	
Gum Gully	Approximately 1,000 feet upstream of Stroker Road	*59	+59	Harris County (Uninc. Areas).
	At confluence with Jackson Bayou	*29	+28	
Halls Bayou	Approximately at Moselle Road	*104	+99	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Greens Bayou	*33	+36	
Halls Road Ditch	Approximately 3,300 feet upstream of Fuqua Road	*41	+39	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Clear Creek	*29	+29	
Harris Gully	At Rice Boulevard	None	+46	City of Houston.
	At confluence with Brays Bayou	None	+41	
Horsepen Bayou	Approximately 900 feet downstream of SH3 Highway	*25	+25	City of Houston and City of Pasadena.
	At confluence with Armand Bayou	*11	+12	
Horsepen Bayou (City of Baytown).	Approximately 2,500 feet upstream of FM 146	*20	+20	City of Baytown.
	At confluence with Cedar Bayou	*17	+15	
Horsepen Bayou Diversion Channel.	Approximately 100 feet upstream of Garden Creek Way.	*21	+20	City of Houston.
	At confluence with Horsepen Bayou	*20	+20	
Horsepen Creek	Approximately 4,500 feet upstream West Road	None	+135	Harris County (Uninc. Areas) and City of Houston.
	Approximately at Summerville Lane	*107	+105	
Hughes Gully	Approximately at Lenze Road	*135	+133	Harris County (Uninc. Areas).
	At confluence with Willow Creek	*129	+128	
Hunting Bayou	Approximately 500 feet downstream of Jensen Drive	*47	+46	City of Houston, City of Galena Park and City of Jacinto City.
	At confluence with Ship Channel	*12	+12	
Jackson Bayou	Approximately 200 feet downstream of Ramsey Road	*49	+49	Harris County of (Uninc. Areas).
	At confluence with Ship Channel	*29	+28	
Jordan Gully	Approximately 400 feet downstream of Derric Drive	*68	+70	Harris County (Uninc. Areas), City of Houston, and City of Humble.
	At confluence with West Fork San Jacinto River	*61	+60	
Keegans Bayou	Approximately 1,300 feet upstream of Eldridge	*86	+84	City of Houston.
	At Braeswood Boulevard	*68	+64	
Kickapoo Creek	Approximately 300 feet downstream of Fiel Store Road.	None	+271	Harris County (Uninc. Areas).
	At confluence with Spring Creek	None	+220	
Kothman Gully	Approximately 200 feet downstream of Peachstone Place.	*138	+134	Harris County (Uninc. Areas).
	At confluence with Seals Gully	*108	+106	
Lake Houston	Approximately at FM 1960	*50	+50	City of Houston.
	At Lake Houston Dam	*50	+49	
Langham Creek (Addicks Reservoir Diversion Channel).	Approximately at Peek Road	*156	+158	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Buffalo Bayou	*80	+76	
Lemm Gully	Approximately 800 feet upstream of Louetta Road	*112	+112	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*90	+91	
Little Cedar Bayou	Approximately 100 feet upstream of Southern Pacific Railroad.	*21	+21	City of La Porte.
	Approximately at South Broadway Street	*13	+13	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Little Cypress Creek	Approximately 3,000 feet downstream of Kermier Road.	*221	+219	Harris County (Uninc. Areas).
	At confluence with Little Cypress Creek	None	+132	
Little Mound Creek	Approximately 1,100 feet downstream of Burton Cemetery Road.	*232	+234	Harris County (Uninc. Areas).
	At confluence with Mound Creek	*205	+208	
Little Vince Bayou	Approximately at Wichtia Street	*28	+28	City of Houston and City of Pasadena.
	At confluence with Vince Bayou	*12	+12	
Little White Oak Bayou	Approximately 200 feet upstream of Rittenhouse	*83	+81	City of Houston.
	At confluence with White Oak Bayou	*42	+38	
Luce Bayou	Approximately 4,500 feet upstream of Trent Road (Extended).	*67	+72	Harris County (Uninc. Areas) and City of Houston.
	At confluence with East Fork San Jacinto	*50	+50	
Mason Creek (Unnamed Tributary to Mason Creek).	Approximately 100 feet downstream Charlton House Lane.	*130	+135	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Barker Reservoir	*98	+97	
McGee Gully	Approximately 1,600 feet downstream of North Main Street.	*34	+33	Harris County (Uninc. Areas).
	At confluence with Cedar Bayou	*18	+17	
Metzler Creek	Approximately 500 feet downstream of Kuykendahl Road.	None	+138	Harris County (Uninc. Areas).
	At confluence with Cannon Gully	*130	+131	
Mexican Gully	Approximately 2,000 feet upstream of confluence with Luce Bayou.	*67	+64	Harris County (Uninc. Areas).
	At confluence with Luce Bayou	*59	+64	
Mills Branch	Approximately 1,000 feet upstream of Mills Branch Road.	None	+73	City of Houston.
	At confluence with White Oak Creek	*61	+61	
Mound Creek	Approximately 1,500 feet downstream of confluence with Little Mound Creek.	*204	+207	Harris County (Uninc. Areas).
	Approximately 6,500 feet downstream of Yellowbird Road (Extended).	*192	+192	
North Fork Greens Bayou	Approximately 400 feet downstream of Sablechase Drive.	*108	+108	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Greens Bayou	*93	+91	
Panther Creek	Approximately at Holland Avenue	*12	+14	City of Houston and City of Galena Park.
	At confluence with Buffalo Bayou—Houston Ship Channel.	*12	+12	
Patrick Bayou	Approximately 100 feet downstream of Avenue X	None	+25	City of Houston and City of Deer Park.
	At confluence with Buffalo Bayou—Houston Ship Channel.	*12	+11	
Pillot Gully	Approximately 400 feet downstream of Gregson Road	*149	+145	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*118	+120	
Pine Gully (C103–00–00)	200 feet upstream of Plum Road	*36	+35	City of Houston.
	At confluence with Sims Bayou	*15	+21	
Pine Gully (F220–00–00 & F220–03–00).	Approximately at Old Highway 146	*12	+12	Harris County (Uninc. Areas) and City of Seabrook.
	At confluence with Tributary of Pine Gully	*12	+12	
Pine Gully (Q101–00–00)	Approximately at Tri City Beach Road	*12	+12	City of Baytown.
	At confluence with Cedar Bayou	*12	+12	
Plum Creek	150 feet upstream of Fennel Road	*30	+20	City of Houston.
	At confluence with Sims Bayou	*15	+19	
Poor Farm Ditch	Approximately 1,000 feet downstream of Milford Street.	None	+50	City of Houston, City of Southside Place, and City of West University Place.
	At confluence with Brays Bayou	None	+48	
Private	Approximately 700 feet upstream of Havana Drive	None	+32	City of Deer Park.
	At confluence with B114–00–00	None	+32	
Reinhardt Bayou	Approximately 4,000 feet downstream John F. Kennedy Service Road.	*80	+78	City of Houston.
	At confluence with Gamers Bayou	*67	+65	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Roan Gully	Approximately 200 feet downstream of Stuebner Airline Road.	*150	+148	Harris County (Uninc. Areas).
	At confluence with Willow Creek	*137	+137	
Rock Hollow	Approximately 1,400 feet upstream of Mound Road	*208	+208	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*162	+161	
Rolling Fork	Approximately 200 feet upstream of Plum Ridge Drive	*112	+108	Harris County (Uninc. Areas).
	At confluence with White Oak Bayou	*99	+96	
Rummel Creek	Approximately at Chatteron Drive	None	+86	City of Houston.
	At confluence with Buffalo Bayou	None	+66	
Salt Water Ditch	150 feet upstream of Bellfort Avenue	*41	+41	City of Houston.
	At confluence with Sims Bayou	*40	+35	
San Jacinto River	Approximately 1,000 feet upstream of I–10	*14	+13	Harris County (Uninc. Areas) and City of Houston.
	Approximately at the downstream fame of Lake Houston Dam.	*34	+33	
San Jacinto River-Houston Ship Channel.	Approximately at Battleground Road	*15	+15	City of Houston.
	At confluence with Galveston Bay	*19	+19	
Schramm Gully	Approximately at Cavalcade	*47	+46	City of Houston.
	At confluence with Hunting Bayou	*47	+46	
Schultz Gully	Approximately 700 feet downstream Aldine Westfield Road.	*89	+94	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*84	+84	
Seals Gully	Approximately at Rhodes Road	*132	+134	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*98	+96	
Senger Gully	Approximately 500 feet upstream of Old Holzwarth Road.	*115	+113	Harris County (Uninc. Areas) City of Houston.
	At confluence with Lemm Gully	*90	+91	
Sheldon Reservoir	Approximately 2,500 feet upstream of South Lake Houston Parkway.	*49	+48	Harris County (Uninc. Areas).
	At confluence with Carpenter Bayou	*49	+48	
Shook Gully	Approximately 5,500 feet upstream of Doverbrook Drive (Extended).	None	+76	Harris County (Uninc. Areas).
	At confluence with Luce Bayou	*55	+59	
Sims Bayou	200 feet upstream of Beltway 8	*70	+66	City of Houston.
	At confluence with Ship Channel	*12	+13	
Soldiers Creek	Approximately 200 feet downstream of Piney Point Road.	None	+72	City of Piney Point Village.
	At confluence with Buffalo Bayou	None	+52	
South Mayde Creek (Unnamed Tributary to South Mayde Creek).	Approximately 10,500 feet upstream of Katy Hockley Road.	*170	+170	Harris County (Uninc. Areas).
	At confluence with Addicks Reservoir	*104	+101	
Spring Branch	Approximately at Campbell Road	*81	+77	City of Spring Valley and City of Houston.
	At confluence with Buffalo Bayou	*52	+48	
Spring Creek	Approximately 1,000 feet upstream of Waller Gladdish Road.	None	+291	Harris County (Uninc. Areas), City of Houston, and City of Tomball.
	At confluence with West Fork San Jacinto River	*66	+66	
Spring Gully (G109–00–00)	Approximately 1,500 feet upstream of Red Bluff Road	*15	+14	City of Pasadena and City of La Porte.
	Approximately 2,500 feet upstream of Fairmont Parkway.	None	+17	
Spring Gully (K–131–00–00)	Approximately 1,000 feet upstream of Spring Cypress Road.	None	+138	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*107	+108	
Spring Gully (O200–00–00)	Approximately 1,000 feet downstream of Prairie Road	*36	+35	Harris County (Uninc. Areas) and City of Baytown.
	At confluence with Burnett Bay	*12	+12	
Spring Gully (P110–00–00)	Approximately 1,500 feet downstream of Lake Houston Parkway.	None	+30	Harris County (Uninc. Areas).
	At confluence with Greens Bayou	*26	+29	
Spring Gully Diversion Channel.	Approximately 200 feet downstream of Spring Gully	*22	+20	Harris County (Uninc. Areas).
	At confluence with San Jacinto River	*15	+13	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Sulphur Gully	Approximately 1,500 feet downstream of Flaggstaff Lane.	None	+34	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Greens Bayou	*26	+28	
Swengel Ditch	At East Ocean Drive	None	+42	City of Houston.
	At confluence with Sims Bayou	None	+40	
Taylor Bayou	At Shoreacres Boulevard	*11	+11	City of Taylor Lake Village, City of El Lago, and City of Pasadena.
	At confluence with Clear Creek	*11	+11	
Taylor Bayou Diversion Channel.	1,000 feet West of Shady Lane	None	+11	Harris County (Uninc. Areas) and City of Pasadena.
	At confluence with Taylor Bayou	None	+11	
Taylor Gully	Approximately 400 feet upstream of Manor Drive	*72	+73	City of Houston.
	At confluence with White Oak Creek	*57	+59	
Theiss Gully & Tributary to Theiss Gully.	Approximately 1,700 feet upstream of Suzanne Court	*144	+144	Harris County (Uninc. Areas).
	At confluence with Spring Gully	*108	+108	
Tributary 1.61 to Brickhouse Gully.	Approximately at Pinemont Drive	*85	+82	City of Houston.
	At confluence with Brickhouse Gully	*76	+71	
Tributary 0.12 to Tributary 13.92.	Approximately 2,000 feet upstream of Botkins Road	*216	+215	Harris County (Uninc. Areas).
	At confluence with Tributary 13.92 to Little Cypress Creek.	*186	+187	
Tributary 0.26 to Willow Creek.	Approximately 2,000 feet downstream of Fox Hollow Boulevard.	*121	+120	Harris County (Uninc. Areas).
	At confluence with Willow Creek	*121	+120	
Tributary 0.55 to Tributary 3.19 Garners.	Approximately 100 feet downstream of Houston Avenue.	*80	+77	Harris County (Uninc. Areas) and City of Humble.
	At confluence with Williams Gully	*65	+63	
Tirbutary 1.25 to Boggs Gully	Approximately 800 feet downstream of Hufsmith Kohrville Road.	*173	+173	Harris County (Uninc. Areas) and City of Tomball.
	At confluence with Boggs Gully	*158	+159	
Tributary 1.63 to Rock Hollow.	Approximately 1.5 miles downstream of Mount Road	*194	+193	Harris County (Uninc. Areas).
	At confluence with Rock Hollow	*166	+165	
Tributary 1.78 to Willow Springs Bayou.	Approximately 300 feet upstream of North P Street	*27	+27	City of Deer Park and City of La Porte.
	At confluence with Willow Springs Bayou	*23	+20	
Tributary 1.95 to North Fork Greens Bayou.	Approximately 2,000 feet downstream Bammel Road (FM 1960).	*112	+108	Harris County (Uninc. Areas).
	At confluence with Greens Bayou	*95	+97	
Tributary 10.08 to Clear Creek.	2,500 feet downstream of Bay Area Boulevard	*25	+23	Harris County (Uninc. Areas).
	At confluence with Clear Creek	*12	+12	
Tributary 10.1 to White Oak Bayou.	Approximately 300 feet downstream of Pinemont Drive.	None	+80	City of Houston.
	At confluence with White Oak Bayou	*70	+71	
Tributary 10.46 to Armand Bayou.	Approximately 700 feet upstream of Preston Boulevard.	None	+33	City of Pasadena.
	At confluence with Armand Bayou	*22	+20	
Tributary 10.77 to Sims Bayou.	Approximately 200 feet downstream of Orem Drive	*43	+40	City of Houston.
	At confluence with Sims Bayou	*40	+36	
Tributary 10.99 to Little Cypress Creek.	Approximately 300 feet downstream of Cook Road	*213	+212	Harris County (Uninc. Areas).
	At confluence with Little Cypress Creek	*174	+175	
Tributary 11.715 to Carpenters Bayou.	Approximately 1,700 feet upstream of Beaumont Highway.	*46	+43	Harris County (Uninc. Areas).
	At confluence with Carpenters Bayou	*40	+39	
Tributary 11.96 to Halls Bayou.	Approximately 900 feet downstream of East Carby Street.	*76	+73	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Halls Bayou	*74	+73	
Tributary 12.05 to Hunting Bayou.	Approximately at Wipprecht Street	*51	+48	City of Houston.
	At confluence with Hunting Bayou	*45	+44	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Tributary 12.18 to Armand Bayou.	Approximately at Beltway 8	*30	+30	City of Pasadena.
	At confluence with Armand Bayou	*26	+26	
Tributary 12.70 to Hunting Bayou.	Approximately at Crane Street	*46	+45	City of Houston.
	At confluence with Hunting Bayou	*46	+45	
Tributary 13.50 to Willow Creek.	Approximately 1,000 feet downstream of FM 2920	*176	+174	Harris County (Uninc. Areas).
	At confluence with Willow Creek	*160	+160	
Tributary 13.83 to Sims Bayou.	Approximately 250 feet upstream of Sunbeam	*48	+42	City of Houston.
	At confluence with Sims Bayou	*44	+42	
Tributary 13.92 to Little Cypress Creek.	Approximately 600 feet downstream of Botkins Road	*201	+199	Harris County (Uninc. Areas).
	At confluence with Little Cypress	*186	+187	
Tributary 14.27 to Greens Bayou.	Approximately 300 feet downstream of Van Zandt	*64	+62	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Greens Bayou	*41	+43	
Tributary 14.82 to Greens Bayou.	Approximately 200 feet downstream of Spottswood Drive.	None	+63	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Greens Bayou	*44	+44	
Tributary 15.8 to White Oak Bayou.	Approximately 500 feet downstream of Fairbanks North Houston Road.	*104	+100	Harris County (Uninc. Areas).
	At confluence with White Oak Bayou	*92	+89	
Tributary 17.82 to Sims Bayou.	Approximately 100 feet downstream of Airport Boulevard.	*53	+52	City of Houston.
	At confluence with Sims Bayou	*53	+52	
Tributary 19.05 to White Oak Bayou.	Approximately 1,300 feet downstream of Wright Road	*115	+111	City of Jersey Village.
	At confluence with White Oak Bayou	*109	+104	
Tributary 19.82 to White Oak Bayou.	Approximately at Highway 290	*117	+114	City of Jersey Village.
	At confluence with White Oak Bayou	*111	+106	
Tributary 2.00 to Berry Bayou	700 feet upstream of College Street	*35	+33	City of Houston and City of South Houston.
	At confluence with Berry Bayou	*23	+24	
Tributary 2.01 to Williams Gully.	Approximately 1,000 feet downstream of Atascocita Road.	*72	+70	Harris County (Uninc. Areas).
	At confluence with Williams Gully	*57	+58	
Tributary 2.1 to Spring Gully	Approximately 600 feet upstream of Plymouth Ridge	*133	+133	Harris County (Uninc. Areas).
	At confluence with Spring Gully	*116	+114	
Tributary 2.17 to Tributary 52.9 to Upper Buffalo Bayou/ Cane.	Approximately 300 feet downstream of Mason Road	*103	+100	Harris County (Uninc. Areas).
	At confluence with Tributary 52.9 to Upper Buffalo Bayou/ Cane.	*100	+100	
Tributary 2.44 to Willow Creek.	Approximately 400 feet downstream of Alderley Road	*135	+135	Harris County (Uninc. Areas).
	At confluence with Willow Creek	*123	+123	
Tributary 2.70 to Gum Gully	Approximately 1,200 feet upstream of Humble Crosby Road.	*52	+51	Harris County (Uninc. Areas).
	At confluence with Gum Gully	*33	+35	
Tributary 20.25 to Sims Bayou.	Approximately 500 feet downstream of Melanite	None	+59	City of Houston.
	At confluence with Sims Bayou	*57	+55	
Tributary 20.86 to Brays Bayou.	Approximately 100 feet downstream of Southern Pacific Railroad.	*74	+72	City of Houston.
	At confluence with Brays Bayou	*69	+67	
Tributary 20.88 to Greens Bayou.	Approximately 200 feet downstream IH 59	*70	+68	Harris County (Uninc. Areas) City of Houston.
	At confluence with Greens Bayou	*59	+59	
Tributary 20.90 to Brays Bayou.	Approximately 200 feet upstream of Cook Road	None	+81	City of Houston.
	At confluence with Brays Bayou	*69	+67	
Tributary 21.08 to Spring Creek.	Approximately 250 feet downstream of Railroad	None	+131	Harris County (Uninc. Areas).
	At confluence with Spring Creek	*119	+118	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Tributary 21.95 to Brays Bayou.	Approximately 1,000 feet downstream of Wilcrest Drive.	*72	+71	City of Houston.
	Approximately at Synott Road	*82	+80	
Tributary 22.69 to Brays Bayou.	Approximately 400 feet upstream of Richmond Avenue.	*74	+72	City of Houston
	Approximately 500 feet downstream of High Star Drive.	*74	+72	
Tributary 23.53 to Brays Bayou.	Approximately 100 feet downstream of Metro Boulevard.	None	+80	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Brays Bayou	*75	+73	
Tributary 24.97 to Greens Bayou.	Approximately 350 feet downstream IH 45	*86	+82	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Greens Bayou	*69	+68	
Tributary 26.20 to Brays Bayou.	Approximately 2,000 feet upstream of Piping Rock Road.	*84	+82	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Bray Bayou	*79	+78	
Tributary 26.64 to Greens Bayou-Hoods Bayou.	Approximately 2,000 feet upstream Farrell Road	99	+98	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Greens Bayou	*73	+73	
Tributary 29.16 to Brays Bayou.	Approximately 400 feet upstream of Addicks Clodine Road.	*85	+85	Harris County (Uninc. Areas).
	At confluence with Brays Bayou	*83	+84	
Tributary 3.08 to Gum Gully	Approximately 7,500 feet upstream of Golf Club Drive	None	+56	Harris County (Uninc. Areas).
	At confluence with Gum Gully	*35	+36	
Tributary 3.10 to	3,000 feet downstream of Red Bluff Road	*11	*11	Harris County (Uninc. Areas).
	At confluence with Taylor Bayou	*11	*11	
Tributary 3.19 to	Approximately 150 feet downstream Wilson Road	*72	+71	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Garners Bayou	*62	+61	
Tributary 3.31 to Berry Bayou	100 feet upstream of Princess Drive	*35	+34	City of Houston
	At confluence with Berry Bayou	*31	+29	City of South Houston.
Tributary 3.33 to Carpenters Bayou.	Approximately 700 feet downstream of Ashland Drive	*29	+28	Harris County (Uninc. Areas.
	At confluence with Carpenters Bayou	*13	+14	
Tributary 3.36 to Taylor Bayou.	1,000 feet downstream of Choates Road	*11	+11	Harris County (Uninc. Areas).
	At confluence with Taylor Bayou	*11	+11	
Tributary 3.9 to Turkey Creek	Approximately 300 feet downstream West Little York Road.	None	+110	Harris County (Uninc. Areas) City of Houston.
	At confluence with Turkey Creek	*104	+101	
Tributary 3.93 to Taylor Bayou.	500 feet West of Railroad	*11	+11	Harris County (Uninc. Areas) and City of Pasadena.
	At confluence with Taylor Bayou	*11	+11	
Tributary 32.23 to Greens Bayou.	Approximately 200 feet downstream Spears Road	*103	+98	Harris County (Uninc. Areas.
	At confluence with Greens Bayou	*95	*92	
Tributary 34.60 to Greens Bayou.	Approximately 300 feet downstream Antoine Drive	*106	+103	Harris County (Uninc. Areas.
	At confluence with Greens Bayou	*103	+99	
Tributary 36.6 to Cypress Creek.	Approximately 6,000 feet upstream of Access Road	*153	+152	Harris County (Uninc. Areas.
	At confluence with Cypress Creek	*148	+147	
Tributary 37.1 to Cypress Creek.	Approximately 1,000 feet downstream of Highway 290	*154	+153	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*149	+148	
Tributary 4.51 to Horsepen Bayou.	Approximately 600 feet upstream of Space Center Boulevard.	*22	+22	City of Houston.
	At confluence with Horsepen Bayou	*19	+19	
Tributary 4.96 to Mason Creek.	Approximately 7,800 feet upstream of Peek Road South.	*135	+135	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Mason Creek	*125	+122	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Tributary 40.7 to Cypress Creek.	Approximately 1,500 feet downstream of Highway 290	*195	+198	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*157	+156	
Tributary 42.7 to Cypress Creek.	Approximately 2 miles upstream of Jack Road	*195	+197	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*160	+159	
Tributary 44.5 to Cypress Creek.	Approximately 3,800 feet downstream of Mound Road	*206	+208	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*166	+164	
Tributary 5.44 to Horsepen Bayou.	200 feet upstream of Crescent Land	None	+21	City of Houston.
	At confluence with Horsepen Bayou	*21	+21	
Tributary 52.9 to Upper Buffalo Bayou/Cane.	Approximately 3,000 feet downstream Highland Knolls Drive.	*101	+102	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Cane Island Branch	*98	+97	
Tributary 6.71 to Halls Bayou	Approximately 200 feet downstream of Mount Houston.	None	+62	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Halls Bayou	*58	+56	
Tributary 6.77 to Buffalo Bayou.	Approximately 400 feet upstream of First Street	*12	+12	City of Houston.
	At confluence with Buffalo Bayou-Houston Ship Channel.	*12	+12	
Tributary 7.62 to Mound Creek.	Approximately 600 feet upstream of Burton Cemetery Road (Extended).	*225	+227	Harris County (Uninc. Areas).
	Approximately at Burton Cemetery Road (Extended)	*221	+225	
Tributary 8.16 to Willow Creek.	Approximately 2,000 feet downstream of Mahaffey Road.	*158	+158	Harris County (Uninc. Areas.
	At confluence with Willow Creek	*145	+143	
Tributary 9.36 to Little Cypress Creek.	Approximately 800 feet downstream of Bauer Hockley Road.	None	+174	Harris County (Uninc. Areas).
	At confluence with Little Cypress Creek	*167	+168	
Tributary 9.39 to Armand Bayou.	Approximately 6,000 feet downstream of Farley Road	*28	−28	City of Houston
	At confluence with Armand Bayou	*19	−18	City of Pasadena.
Tributary 9.4 to South Mayde Creek.	Approximately at Katy Hockley Cut-off Road	*148	+147	Harris County (Uninc. Areas).
	At confluence with South Mayde Creek	*122	+125	
Tributary B to Willow Springs Bayou.	Approximately 150 feet upstream of Amy Drive	None	+26	City of Deer Park.
	At confluence with Willow Springs Bayou	None	+26	
Tributary to Spring Gully	Approximately 1,200 feet upstream of T.C. Jester Boulevard.	*139	+139	Harris County (Uninc. Areas).
	At confluence with Spring Gul	*122	+123	
Tributary to Turkey Creek	Approximately 200 feet upstream of Farrel Road	None	+81	City of Houston.
	At confluence with Turkey Creek	None	+78	
Turkey Creek (A119–00–00)	At Sageglen Road	*30	31	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Clear Creek	*28	−28	
Turkey Creek (K111–00–00)	Approximately at Willow West Drive	*106	+105	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Cypress Creek	*76	+78	
Turkey Creek and Continuation of Turkey Creek.	Approximately 200 feet downstream of West Little York Road.	*110	+106	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Buffalo Bayou	*79	+75	
TxDOT Ditch #4	Approximately 1,700 feet downstream Houston Avenue.	*62	+60	Harris County (Uninc. Areas) and Cities of Houston and Humble.
	At confluence with Jordan Gully	*61	+60	
Unnamed Tributary of Buffalo Bayou (W157–00–00).	Approximately 500 feet downstream of Westheimer Road.	None	+71	City of Houston
	At confluence with Buffalo Bayou	None	+67	
Unnamed Tributary to (A119–07–00).	1,000 feet upstream of Conklin Lane	None	+32	City of Houston.
	At confluence with A119–07–02	None	+31	
Unnamed Tributary to B114–00–)).	Approximately 100 feet downstream of Kalwick Drive	None	+32	City of Deer Park.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Unnamed Tributary to Bear Creek.	At confluence with B114–00–00	None	+32	Harris County (Uninc. Areas) and City of Houston.
	Approximately 100 feet downstream Judyleigh Drive ..	None	+117	
Unnamed Tributary to Buffalo Bayou (W170–00–00).	At confluence with Beaqr Creek	None	+103	Harris County (Uninc. Areas) and City of Houston.
	Approximately 100 feet upstream of Barker Clodine Road.	None	+101	
Unnamed Tributary to Cedar Bayou.	At confluence with Buffalo Bayou	None	+77	Harris County (Uninc. Areas).
	Approximately 200 feet downstream of Crosby Eastgate Road.	None	+60	
Unnamed Tributary to Cow Bayou.	At confluence with Cedar Bayou	None	+52	City of Houston and City of Weber.
	100 feet upstream of Camino Real Boulevard	*16	+12	
Unmanned Tributary to Greens Bayou (P–147–00–00).	At confluence with Cow Bayou	*11	+12	City of Houston.
	Approximately 1,200 feet downstream Antoine Drive ..	None	+104	
Unnamed Tributary to Greens Bayou (P114–00–00).	At confluence with Green Bayou	None	+93	City of Houston.
	Approximately 200 feet downstream of Mesa Drive	None	+38	
Unnamed Tributary to Greens Bayou (P155–00–00.	At confluence with Green Bayou	None	+32	Harris County (Uninc. Areas) and City of Houston.
	Approximately 200 feet downstream of P140–00–00 ..	*79	+80	
Unnamed Tributary to Greens Bayou (P156–00–00).	At confluence with Greens Bayou	*79	+78	Harris County (Uninc. Areas) and City of Houston.
	Approximately 400 feet upstream of Goodnight Trail ..	*82	+82	
Unnamed Tributary to San Jacinto River (G103–01–00).	At confluence with Greens Bayou	*82	+80	Harris County (Uninc. Atreas).
	Approximately at Pine Street	None	+26	
Unnamed Tributary to San Jacino River (G103–07–00).	At confluence with San Jacinto River	None	+11	Harris County (Uninc. Areas).
	Approximately 600 feet downstream of Miller Road No. 2.	None	+41	
Unnamed Tributary to Turkey Creek (A119–05–00).	At confluence with San Jacinto River	None	.....	City of Houston.
	250 feet downstream of SH 3	None	+32	
Unnamed Tributary to Turkey Creek (A119–07–00).	At confluence with Turkey Creek	None	+30	City of Houston.
	600 feet upstream of confluence with Turkey Creek ...	None	+31	
Unnamed Tributary to White Oak Bayou.	At confluence with Turkey Creek	None	+31	Harris County (Uninc. Areas) and City of Houston.
	Approximately 150 feet downstream of Round Bank Drive.	None	+104	
Unnamed Tributary to Willow Creek.	At confluence with White Oak Bayou	None	+85	Harris County (Uninc. Areas).
	Approximately 300 feet upstream of Elberry Road	None	+123	
Vince Bayou	At confluence with Willow Creek	None	+123	City of Houston and City of Pasedena.
	Approximately at Fairmount Parkway	*35	+33	
Vogel Creek	At confluence with Skip Channel	*12	+12	Harris County (Uninc. Areas) and City of Houston.
	Approximately 300 feet downstream of Fallbrook Road.	*109	+104	
Wallisville Outfall	At confluence with White Oak Bayou	*77	+74	City of Houston.
	Approximately 200 feet downstream of Gelhorn Drive	*35	+36	
West Fork San Jacinto River	At confluence with Hunting Bayou	*25	+26	Harris County (Uninc. Areas), City of Humble, and City of Houston.
	Approximately 600 feet upstream of US Highway 59 ..	*68	+68	
White Oak Bayou	At confluence with Lake Houston	*50	+50	Harris County (uninc. Areas), City of Houston, and City of Jersey Village.
	Approximately 200 feet downstream of Highway 290	None	+131	
White Oak Creek	Approximately at I–10	*38	+35	City of Houston.
	Approximately 1,800 feet upstream of Hueni Road	*65	+63	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
	At confluence with Caney Creek	*56	+58	
Wild Cow Gulch	Approximately at Hickory Gate Drive	*90	+95	Harris County (Uninc. Areas).
	At confluence with Cypress Creek	*76	+78	
Williams Gully	Approximately 300 feet upstream of Will Clayton Parkway.	*62	+63	Harris County (Uninc. Areas).
	At confluence with Garners Bayou	*57	+58	
Willow Creek & Continuation of Willow Creek.	Approximately 6,500 feet upstream of Juergen Road	*196	+201	Harris County (Uninc. Areas).
	At confluence with Spring Creek	*121	+120	
Willow Springs Bayou	Approximately 300 feet downstream of Luella Lane	*26	+27	Harris County (Uninc. Areas), City of Pasadena, City of Deer Park, City of La Porte.
	At confluence with Armand Bayou	*21	+20	
Willow Waterhole Bayou	At Braewick Drive	None	+59	City of Houston.
	At confluence with Brays Bayou	*52	+52	
Wunsche Gully	Approximately 2,000 feet East of Wuensche Road	*127	+125	Harris County (Uninc. Areas) and City of Houston.
	At confluence with Lemm Gully	*104	+97	

*National Geodetic Vertical Datum (to convert to NAVD, add 4.2 feet to NGVD elevation)
+North American Vertical Datum

ADDRESSES

Harris County (Unincorporated Areas)
Maps are available for inspection at 10000 Northwest Freeway, Suite 102, Houston, TX 77092.
Send comments to Robert Eckels, County Judge, Harris County, 1001 Preston, Suite 911, Houston, TX 77002.

City of Baytown
Maps are available for inspection at 2401 Market Street, Baytown, TX 77520.
Send comments to Calvin Mundinger, Mayor, 2401 Market Street, Baytown, TX 77520.

City of Bellaire
Maps are available for inspection at 7008 South Rice Avenue, Bellaire, TX 77401.
Send comments to Cindy Siegel, Mayor, 7008 South Rice Avenue, Bellaire, TX 77401.

City of Bunker Hill Village
Maps are available for inspection at 10000 Northwest Freeway, Suite 102, Houston, TX 77092.
Send comments to Bill Marshall, Mayor, 11977 Memorial Drive, Houston, TX 77024.

City of Chelford M.U.D.
Maps are available for inspection at Putney, Moffatt & Easley Inc., 1301 Sherwood Forest, Houston, TX 77043.
Send comments to Carl Peters, President of the Board, 3 Greenway Plaza, Houston, TX 77046.

City of Deer Park
Maps are available for inspection at 710 East Saint Augustine Street, Deer Park, TX 77536.
Send comments to Wayne Riddle, Mayor, 710 East Saint Augustine Street, Deer Park, TX 77536.

City of El Largo
Maps are available for inspection at 98 Lakeshore Drive, El Lago, TX 77586.
Send comments to Brad Emel, Mayor, 98 Lakeshore Drive, El Lago, TX 77586.

City of Galena Park
Maps are available for inspection at 2000 Clinton Drive, Galena Park, TX 77547
Send comments to R.P. Bobby Barrett, Mayor, 2000 Clinton Drive, Galena Park, TX 77547.

City of Hedwig Village
Maps are available for inspection at 10000 Northwest Freeway, Suite 102, Houston, TX 77092.
Send comments to Dee Srinivasan, Mayor, 955 Piney Point Road, Houston, TX 77024.

City of Hillshire Village
Maps are available for inspection at 8389 Westview Drive, Houston, TX 77055.
Send comments to Edward J. Davis, Mayor, 8301 Westview, Houston, TX 77055.

City of Houston
Maps are available for inspection at 901 Bagby, Houston TX 77002.
Send comments to Bill White, Mayor, 901 Bagby, Houston, TX 77002.
Maps are available for inspection at 114 West Higgins, Humble, TX 77338.
Send comments to the Honorable Wilson Archer, Mayor, City of Humble, 114 West Higgins, Humble, TX 77338.

City of Jacinto City
Maps are available for inspection at 10301 Market Street Road, Houston, TX 77029.
Send comments to Mike Jackson, Mayor, 10301 Market Street Road, Houston, TX 77029.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

City of Jersey Village
Maps are available for inspection at 16501 Jersey Drive, Houston, TX 77040.
Send comments to Ed Heathcott, Mayor, 16501 Jersey Drive, Houston, TX 77040.
City of La Porte
Maps are available for inspection at 604 West Fairmont Parkway, La Porte, TX 77571.
Send comments to Alton E. Porter, Mayor, 604 West Fairmont Parkway, La Porte, TX 77571.
City of Missouri City
Maps are available for inspection at 1522 Texas Parkway, Missouri City, TX 77489.
Send comments to Allen Owen, Mayor, 1522 Texas Parkway, Missouri City, TX 77489.
City of Morgans Point
Maps are available for inspection at 1415 East Main Street, Morgans Point, TX 77571.
Send comments to Peggy Arisco, Mayor, 1415 East Main Street, Morgans Point, TX 77571.
City of Nassau Bay
Maps are available for inspection at 1800 NASA Road One, Nassau Bay, TX 77058.
Send comments to Donald Matter, Mayor, 1800 NASA Parkway, Nassau Bay 77058.
City of Pasadena
Maps are available for inspection at 1211 East Southmore, Pasadena, TX 77502.
Send comments to John Manlove, Mayor, 1211 East Southmore, Pasadena, TX 77502.
City of Pearland
Maps are available for inspection at 3519 Liberty Drive, Pearland, TX 77581.
Send comments to Tom Reid, Mayor, 3519 Liberty Drive, Pearland, TX 77581.
City of Piney Village
Maps are available for inspection at 7721 San Felipe, Houston, TX 77063.
Send comments to Carol Fox, Mayor, 7721 San Felipe, Houston, TX 77063.
City of Seabrook
Maps are available for inspection at 1700 First Street, Seabrook, TX 77586.
Send comments to Robin Riley, Mayor, 1700 First Street, Seabrook, TX 77586.
City of Shoreacres
Maps are available for inspection at 601 Shoreacres Blvd, La Porte, TX 77571.
Send comments to Nancy Edmonson, Mayor, 601 Shoreacres, La Porte, TX 77571.
City of South Houston
Maps are available for inspection at 1018 Dallas Street, South Houston, TX 77587.
Send comments to Eloise Smith, Mayor, 1018 Dallas Street, South Houston, TX 77587.
City of Southside Place
Maps are available for inspection at 6309 Edloe Street, Houston, TX 77005.
Send comments to Richard Rothfelder, Mayor, 6309 Edloe Avenue, Houston, TX 77005.
City of Spring Valley
Maps are available for inspection at 1025 Campbell Road, Houston, TX 77055.
Send comments to Mike Andrews, Mayor, 1025 Campbell Road, Houston, TX 77055.
City of Stafford
Maps are available for inspection at 2610 South Main Street, Stafford, TX 77477.
Send comments to Leonard Scarcella, Mayor, 2610 South Main Street, Stafford, TX 77477.
City of Taylor Lake Village
Maps are available for inspection at 500 Kirby, Seabrook, TX 77586.
Send comments to Natalie O'Neil, Mayor, 500 Kirby, Taylor Lake Village, TX 77586.
City of Tomball
Maps are available for inspection at 401 West Market Street, Tomball, TX 77375.
Send comments to H.G. Harrington, Mayor, 401 Market Street, Tomball, TX 77375.
City of Webster
Maps are available for inspection at 311 Pennsylvania Ave, Webster, TX 77598.
Send comments to Donna Rogers, Mayor, 101 Pennsylvania, Webster, TX 77598.
City of West University Place
Maps are available for inspection at 3826 Amherst Street, West University Place, TX 77005.
Send comments to Burt Ballanfant, Mayor, 3800 University Boulevard, West University, TX 77005.
Kingsbridge M.U.D.
Maps are available for inspection at 14526 Royal Hill Drive, Houston, TX 77093.
Send comments to Robert C. Shindler, President of the Board, 14526 Royal Hill Drive, Houston, TX 77093.
Mission Bend M.U.D. #1
Maps are available for inspection at 10000 Northwest Freeway, Suite 102, Houston, TX 77092.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Send comments to Herb McDonald, President of the Board, 2300 First City Tower, Houston, TX 77002.

Mission Bend M.U.D. #1

Maps are available for inspection at Moffatt-Easley Inc, 1303 Sherwood Forest, Houston, TX 77043.

Send comments to Herb McDonald, President of the Board, 2300 First City Tower, Houston, TX 77002.

West Keegans Bayou Improvement District

Maps are available for inspection at 5757 Woodway, Houston, TX 77057.

Send comments to Sandra Weider, President of the Board, 15014 Tramore, Houston, TX 77083.

Willow Fork Drainage District

Maps are available for inspection at Turner, Collie & Braden, 5757 Woodway, Houston, TX 77057.

Send comments to Neal Bishop, President of the Board, 5757 Woodway, Houston, TX 77057.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated June 29, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–13442 Filed 7–7–05; 845 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 70, No. 130
Friday, July 8, 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.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* August 7, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: On April 15, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 19924) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the addition on the current or most recent contractor, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.
2. The action will result in authorizing small entities to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

Bag, Sand Polypropylene (50% of the total polypropylene sand bag requirement for the Defense Supply Center Philadelphia. Does not include the combination of polypropylene and acrylic).
NSN: 8105–01–467–0402—20″ x 14″.
NPA: Southeast Vocational Alliance, Inc., Houston, Texas.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. E5–3635 Filed 7–7–05; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments Must Be Received on or Before: August 7, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to

Procurement List for production by the nonprofit agencies listed:

Products

Bag, Urine Collection
NSN: 6530–00–NSH–0029—Medium, enhanced bag, no options
NSN: 6530–00–NSH–0028—Large, enhanced bag, no options
NSN: 6530–00–NSH–0031—Large, w/ inlet extension option
NSN: 6530–00–NSH–0037—Medium, w/moleskin option
NSN: 6530–00–NSH–0033—Large, w/ moleskin & inlet extension
NSN: 6530–00–NSH–0030—Large, w/ moleskin backing option
NSN: 6530–00–NSH–0035—Large, w/ inlet & drain extension
NSN: 6530–00–NSH–0032—Large, w/ drain extension
NSN: 6530–00–NSH–0039—Medium, w/drain extension
NSN: 6530–00–NSH–0038—Medium, w/inlet extension
NSN: 6530–00–NSH–0034—Large, w/ moleskin & drain extension
NSN: 6530–00–NSH–0040—Medium, w/moleskin & inlet extension
NSN: 6530–00–NSH–0041—Medium, w/moleskin & drain extension
NSN: 6530–00–NSH–0042—Medium, w/inlet & drain extension
NSN: 6530–00–NSH–0043—Medium, w/inlet, drain extension & moleskin
NSN: 6530–00–NSH–0036—Large, w/ inlet, drain extension & moleskin
NPA: Work, Incorporated, North Quincy, Massachusetts
Contracting Activity: Veterans Affairs National Acquisition Center, Hines, Illinois

Paper, Xerographic
NSN: 7530–01–503–8441—8½″x11″ (For Stockton California Depot Only)
NSN: 7530–01–503–8453—11″ x 17″
NSN: 7530–01–503–8449—8½″ x 14″
NSN: 7530–01–503–8445—8½″ x 11″, 3-hole punched
NPA: Louisiana Association for the Blind, Shreveport, Louisiana
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY

Services

Service Type/Location: Custodial Services, U.S. Post Office—Brooklyn, 271 Cadman Plaza East, Brooklyn, New York
NPA: NYSARC, Inc., NYC Chapter, New York, New York
Contracting Activity: GSA, Property Management Center, New York, New York.

Service Type/Location: Warehouse Operation, (At the following locations at Fort Hood, Texas): 89th Quartermaster Co Class III, II & 14, 289th Supply Support Activity Map Depot, 13th COSCOM, 289th Supply Support Activity Weapons Warehouse, 13th COSCOM, 602nd Supply Support Activity, 13th COSCOM, 62nd Supply Support Activity Main, Yard 26th III Corp Major End Items Class VII, Fort Hood, Texas
NPA: Professional Contract Services, Inc., Austin, Texas
Contracting Activity: III Corps and Fort Hood Contracting Command, Fort Hood, Texas

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Janitorial/ Custodial, Eastman Lake, Madera County, California
NPA: None currently authorized.
Contracting Activity: Department of the Army.

Service Type/Location: Janitorial/ Custodial, Lake Mead National Recreation Area, Boulder City, Nevada
NPA: Opportunity Village Association for Retarded Citizens, Las Vegas, Nevada
Contracting Activity: Department of Interior, Reston, Virginia

Service Type/Location: Painting Service, Family Quarters, Fort Sam Houston, Texas
NPA: Goodwill Industries of San Antonio, San Antonio, Texas
Contracting Activity: Department of the Army.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. E5–3636 Filed 7–7–05; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that Mittal Canada Inc. (Mittal) is the successor–in-interest to Ispat Sidebec Inc. (Ispat) and, as a result, should be accorded the same treatment previously accorded to Ispat in regard to the antidumping order on steel wire rod from Canada as of the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Ashleigh Batton, at (202) 482–1376 or (202) 482–6309, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2005, Mittal requested that the Department determine that it had become the successor–in-interest of Ispat, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3). On March 9, 2005, the Department initiated this administrative review. *See Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 70 FR 11612 (*Initiation Notice*). On March 25, 2005, the Department issued Ispat/Mittal a questionnaire requesting further details on Mittal's successor–in-interest claims. The company's response was received by the Department on April 1, 2005.

On May 3, 2005, the Department published the preliminary results of this changed circumstances review and

preliminarily determined that Mittal is the successor–in-interest to Ispat and should receive Ispat's cash deposit rate of 3.86 percent. *See Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 70 FR 22845 (May 3, 2005) (*Preliminary Results*). In the *Preliminary Results*, we stated that interested parties could request a hearing or submit case briefs and/or written comments to the Department no later than 30 days after publication of the *Preliminary Results* notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in the case briefs, seven days subsequent to the due date of the case briefs. We did not receive any hearing requests or comments on the *Preliminary Results*.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the HTSUS definitions for (a) Stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under the order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of Changed Circumstances Review

Based on the information provided by Mittal, and the fact that the Department did not receive any comments during the comment period following the preliminary results of this review, the Department hereby determines Mittal is the successor–in-interest to Ispat for antidumping duty cash deposit purposes.

Instructions to the U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all shipments of the subject merchandise produced and exported by Mittal entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice at 3.86 percent (*i.e.* Ispat's cash deposit rate). This deposit rate shall remain in effect until publication of the final results of the ongoing administrative review, in which Mittal/Ispat is participating.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their

responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act, and section 351.216(e) of the Department's regulations.

Dated: June 24, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3597 Filed 7–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–602, A–583–605, A–588–602, A–549–807, A–570–814]

Certain Carbon Steel Butt–Weld Pipe Fittings from Brazil, Taiwan, Japan, Thailand, and the People's Republic of China; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 1, 2004, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on certain carbon steel butt–weld pipe fittings ("pipe fittings") from Brazil, Taiwan, Japan, Thailand, and the People's Republic of China pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted expedited (120–day) sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340.

SUPPLEMENTARY INFORMATION:

Background:

On December 1, 2004, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on pipe fittings from Brazil, Taiwan, Japan, Thailand, and the People's Republic of China pursuant to section 751(c) of the Act. *See Initiation of Five–Year ("Sunset") Reviews*, 69 FR 69891 (December 1, 2004). The Department received the Notice of Intent to Participate from Trinity Industries, Inc.[1] ("Trinity"); Weldbend Corp. ("Weldbend"); Tubing Forgings of America, Inc.; and Mills Iron Works, Inc. ("TFA/Mills Iron") (collectively "the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations ("Sunset Regulations"). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic–like product in the United States. We received complete substantive responses from the domestic interested parties within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120–day) sunset review of this order.

Scope of the Orders:

The products covered by these orders are pipe fittings from Brazil, Taiwan, Japan, Thailand, and China. Pipe fittings from Brazil, Taiwan, and Japan are defined as carbon steel butt–weld pipe fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished form, that have been formed in the shape of elbows, tees, reducer, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. Such merchandise was classifiable under Tariff Schedules of the United States Annotated ("TSUSA") item number 610.8800. These imports are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item number 7307.93.30.

Pipe fittings from Thailand and China are defined as carbon steel butt–weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join section in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded grooved, or bolted fittings). These imports are currently classifiable under the HTSUS item number 7307.93.30.

The TSUSA and HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage for each of the orders.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Edward Yang, Senior Director, China/NME Office, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated June 29, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading "July 2005." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on pipe fittings from Brazil, Taiwan, Japan, Thailand, and the People's Republic of China would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

[1] Ladish Co., Inc. was a petitioner in the investigation. Trinity acquired the assets of Ladish relating to the production of carbon steel butt-weld pipe fittings in 1997. See Notice of Intent to Participate from Trinity Industries (December 17, 2004).

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
Brazil	
All Manufacturers/Producers/Exporters	52.25
Taiwan	
Rigid	6.84
C.M.	8.57
Gei Bay	87.30
Chup Hsin	87.30
All Others	49.46
Japan	
Awajoi Sangyo, K.K.	30.83
Nippon Benkan Kogyo, Ltd. Co.	65.81
All Others	62.79
Thailand	
Thai Benkan Company	52.60
TTU Industrial Corp., Ltd.	10.68
All Others	39.10
People's Republic of China	
China North Industries Corporation	154.72
Jilin Provincial Machinery & Equipment Import & Export Corp.	75.23
Liaoning Machinery & Equipment Import Export Corp.	134.79
Liaoning Metals & Minerals Import & Export Corp.	103.70
Shenyang Billiongold Pipe Fittings Co. Ltd.	110.39
Shandong Metals & Minerals Import & Export Corp.	35.06
Shenyang Machinery & Equipment Import & Export Corp;. Lianoning Metals; Shenzhen Machinery Industry Corp.;. and All Others	182.90

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 29, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3596 Filed 6–7–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 1, 2004, through April 30, 2005.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 2005.).

SUMMARY: The Department of Commerce ("the Department") has received a request to conduct a new shipper review of the antidumping duty ("AD") order on certain welded carbon steel pipe and tube from Turkey. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214, we are initiating an AD new shipper review for Tosçelik Profil ve Sac Endustrisi A.S. ("Tosçelik"), and its affiliated export trading company, Tosyali Dis Ticaret A.S. ("Tosyali").

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, Lyman Armstrong, or Victoria Cho, at (202) 482–4161, (202) 482–3601, or (202) 482–5075, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2005, the Department received a timely request from Tosçelik, in accordance with 19 CFR 351.214(b), for a new shipper review of the AD order on certain welded carbon steel pipe and tube from Turkey, which has a May anniversary month.[1]

As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Tosçelik certified that it did not export subject merchandise to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which exported subject merchandise during the POI.[2] Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that and subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States.[3]

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, and based on information on the record, we are initiating an AD new shipper review for Tosçelik. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review. We intend to issue final results of this review no later than 90 days after the date on which the preliminary results are issued. *See* 19 CFR 351.214(i).

New Shipper Review Proceeding	Period to be Reviewed
Tosçelik	05/01/2004 - 04/30/2005

[1] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey*, 51 FR 17784 (May 15, 1986).

[2] *See* submission from the Law Offices of David L. Simon on behalf of Tosçelik Profil ve Sac Endustrisi A.S. to the Department regarding Request for New Shipper Review, Case A-489-501, dated May 31, 2005.

[3] *Id.*

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by Tosyali. We will apply the bonding option under 19 CFR 351.107(b)(1)(I) only to entries from Tosyali for which the respective producer under review is Tosçelik. Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214(d).

Dated: June 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3589 Filed 7–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Commission, in the matter of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, Secretariat File No. USA–CDA–2000–1904–11.

SUMMARY: Pursuant to the Order of the Binational Panel dated May 20, 2005, affirming the final remand determination described above the panel review was completed on May 31, 2005.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On May 20, 2005, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Commission (ITC) concerning Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective May 20, 2005.

Dated: July 1, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–3595 Filed 7–7–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070505A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, the Assistant Regional Administrator proposes to recommend that an EFP be issued to test gear modification to reduce bycatch in the NE multispecies fishery that would allow three commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: The Gulf of Maine (GOM) minimum mesh size requirements. Initially, the applicant requested an EFP to conduct research during May to July 15, 2005, and requested an exemption from the regulations pertaining to the GOM Rolling Closure Areas II and III at § 648.81(f)(1)(ii) and (iii), respectively. Due to an oversight, exemptions from GOM minimum mesh size requirements and from the GOM Rolling Closure Area IV (§ 648.81(f)(1)(iv)) were omitted from the May 16, 2005 **Federal Register** notice (70 FR 25814) announcing the EFP for the project. This revision proposes a GOM minimum mesh size exemption (the GOM Rolling Closure Area exemptions would no longer be necessary due to the timing of this action) and would extend the duration of the project to August 12, 2005.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before July 25, 2005.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Manomet Rigid Mesh EFP Proposal Revision." Comments may also be sent via fax to (978) 281–9135, or be submitted via e-mail to the following address: *da5–85r@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Tasker, Fishery Management Specialist, phone (978) 281–9273.

SUPPLEMENTARY INFORMATION: Manomet Center for Conservation Sciences submitted an application for an EFP on March 16, 2005. The primary goal of the research is to test the effectiveness of inserting a rigid mesh panel between the extension and the codend of a trawl net to reduce regulatory discards while targeting yellowtail flounder, winter flounder, summer flounder, American plaice, and cod in inshore GOM waters.

The proposed rigid mesh panel would be 6.56 ft (2 m) in length and would be constructed of elongate meshes 2.36 inches (60 mm) wide and 7.87 inches (200 mm) long. This panel would be

inserted between the extension and the codend of the net and would be the same diameter as the net. This project is proposed to occur in the Western GOM. The project would take place over 22 days from July 2005, to August 12, 2005, in two areas in the GOM waters, excluding the Western GOM Closure Area, as follows: (1) The area from 43°10′ N. lat. to the Maine shoreline, and from 69°30′ W. long. to the Maine shoreline; and (2) the area from 42°00′ N. lat. to 42°30′ N. lat., and from 70°00′ W. long. to the Massachusetts shoreline (approximately 70°40′ W. long.). Researchers have requested an exemption from the regulations establishing the minimum mesh size requirements because the net that they are proposing to use contains a panel of nonconforming mesh (neither diamond nor square in shape). Given that the overall area of the elongate mesh is larger than that of the square and diamond mesh, it is not anticipated that the panel would lead to the capture of a large number of undersized fish.

Researchers would film the interior and exterior of the net to verify proper construction and to document species' reactions to the net. Once the proper construction of the net has been verified, researchers would use the remainder of the trials to test the potential for bycatch reduction of the experimental panel by conducting alternating tows using the net with the experimental panel and a conventional codend, following an A-B-B-A pattern, comparing the catches between the two codends. No more than 110 tows total for the three vessels combined would be performed during at-sea trials. Under the previously issued EFP, researchers were authorized to conduct similar research over 30 days of sea trials; however, they were able to conduct only 8 days of sea trials.

The researchers anticipate that a total of 4,917 lb (2,230.3 kg) of fish, including 1,320 lb (598.7 kg) of cod, 550 lb (249.5 kg) of yellowtail flounder, 550 lb (249.5 kg) of winter flounder, and 550 lb (249.5 kg) of American plaice would be harvested throughout the course of the study. Other species that are anticipated to be caught are species of skates, smooth and spiny dogfish, sculpins, sea ravens, and sea robins. All legal-sized fish, within the possession limits, would be sold, with the proceeds going toward defraying the cost of vessel chartering fees. There would be no retention of undersized fish aboard the vessels and there is no anticipated impact on marine mammals or endangered species.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research, and minimal enough so as not to change the scope or impact of the initially approved EFP request.

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

Dated: July 5, 2005.

Alan D. Risenhoover

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

[FR Doc. E5–3602 Filed 7–7–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070505C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one or more vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the Atlantic sea scallop possession and landings restrictions specified at 50 CFR 648.53(a). The experiment proposes to conduct underwater videotaping of sea turtle interactions with scallop dredge gear. The EFP would allow these exemptions for one or more commercial vessels for a total of 20 days of fishing. All experimental work would be monitored by Coonamessett Farm, Inc., (CFI) personnel.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before July 25, 2005.

ADDRESSES: Comments should be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on CFI EFP Proposal for Sea Turtle/Scallop Dredge Interaction Study."
- Fax: (978) 281–9135.
- E-mail: *DA5.89@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, phone: 978–281–9221, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: A request for an EFP was submitted by CFI on May 9, 2005, to conduct research work that is being funded through the Northeast Fisheries Science Center (NEFSC) for a study to collect underwater video to gather additional information about sea turtle behavior in and around scallop dredge gear equipped with a chain mat. The project would investigate sea turtle behavior around scallop dredges and in areas where scalloping has recently occurred. Researchers would try to attract sea turtles using viscera and fishing activity to observe turtle behavior relative to the scallop dredge.

The commercial vessel involved in the project would fish one 13–ft (4 m) scallop dredge outfitted with self-contained video cameras; one camera would be mounted in a forward-looking position, while the other is mounted on the towing warp to look back at the dredge. Tows would be concentrated in one area doing short turnaround tows. The video cameras would also be lowered to examine the scallop dredge path along the bottom as well as the scallop viscera dumping location. The vessel would fish off the coast of New Jersey and the Delmarva Peninsula, where sea turtle interactions are likely. The researcher initially proposed to conduct this research during the period June 15 - October 31, 2005. The study would involve a maximum of 20 days of fishing, with at least six tows conducted each day. The total anticipated scallop catch would be 8,000 lb (3,629 kg), which would be landed and sold. It is

anticipated that the catch would be taken in 120–150 tows.

Previous research in this area has shown bycatch to be limited. It is expected that fish bycatch may consist of 5,000 lb (2,268 kg) of little skate, less than 50 lb (23 kg) of monkfish and approximately 300 lb (136 kg) of flatfish. All incidental catch would be returned to the sea. If there are interactions with sea turtles, the sea turtles would be handled in accordance with sea turtle resuscitation regulations at 50 CFR 223.206(d)(1). If any injured sea turtles are encountered, the researchers would arrange for transfer to authorized rehabilitation facilities. Observers from CFI would collect data on each trip.

The possession and landing restrictions for commercial vessels fishing under the General Category scallop vessel permit allow such vessels to harvest and land up to 400 lb (181 kg) of scallops on each trip, with up to one landing per calendar day. In order to improve the success of the research project, CFI has requested an EFP to authorize the commercial vessels involved to land 400 lb (181 kg) for each day that they fish, without requiring the vessel to return to port every day to offload the scallop catch. This would enable the vessel to stay in the vicinity of sea turtles that are encountered.

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

Dated: July 5, 2005.

Alan D. Risenhoover

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

[FR Doc. E5–3611 Filed 7–7–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the African Growth and Opportunity Act

June 30, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Directive to the Commissioner of Customs and Border Protection

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Ethiopia shall be treated as "handloomed, handmade, or folklore articles" and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Ethiopia with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including hand-loomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. In Executive Order 13191, the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being hand-loomed, handmade, or folklore articles. (66 FR 7272)

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, hand-loomed, or folklore articles.

CITA has consulted with Ethiopian authorities and has determined that hand-loomed fabrics, hand-loomed articles (e.g., hand-loomed rugs, scarves, place mats, and tablecloths), handmade articles made from hand-loomed fabrics, and the folklore articles described in the annex to this notice, if produced in and exported from Ethiopia, are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping "9".

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 30, 2005.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13191 of January 17, 2001, has determined, effective on July 18, 2005, that the following articles shall be treated as "handloomed, handmade, and folklore articles" under the AGOA: (a) handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and hand-made articles made from handloomed fabrics, if made in Ethiopia from fabric handloomed in Ethiopia; and (b) the folklore articles described in the attached annex if made in Ethiopia. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping "9", in accordance with the provisions of the Visa Arrangement between the Government of Ethiopia and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After additional consultations with Ethiopian authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

ANNEX

CITA has determined that the following textile and apparel goods shall be treated as folklore articles for purposes of the AGOA if made in Ethiopia. Articles must be ornamented in characteristic Ethiopian or regional folk style. An article may not include modern features such as zippers, elastic, elasticized fabrics, or hook-and-pile fasteners (such as velcroc or similar holding fabric). An article may not incorporate patterns that are not traditional or historical to Ethiopia, such as airplanes, buses, cowboys, or cartoon characters and may not incorporate designs referencing holidays or festivals not common to traditional Ethiopian culture, such as Halloween and Thanksgiving. Typical Ethiopian designs may use, but are not limited to, geometric shapes and diamond-shaped or modified diamond-shaped crosses.

Eligible folklore articles:

(a) Shema Borsa (Hand-woven bag/pouch) Shema Borsas are made of relatively thick cotton hand-woven fabric on the exterior with or without an inside lining that is generally machine-woven fabric, and may be hand- or machine-stitched together. The Shema Borsas are typically 10 - 14 inches wide and 10 - 14 inches tall decorated with features including typical small geometrical diamond-shaped patterns, which can be woven into the fabric itself or ornamented with strips of woven silk in geometric shapes, braided silk appliqués, small shells, nuts, silver jewelry, beads, or fringe. The Shema Borsa may or may not have a fold over

flap and have carrying strap(s) and may come with or without closures such as a small strip of decorative fabric looping around a shell, bead or nut.

(b) Sofa Trase Libse (cushion covers/pillow covers)

The Sofa Trase Libse is made of hand-woven material on the front face, often backed with machine made woven or non-woven fabric for support and machine-stitched together, typically 12 - 18 inches tall and wide. Sofa Trase Libses are decorated with typical geometric diamond-shaped designs, may be embroidered, and are slotted in the back as an opening or slotted with a closure of button(s).

[FR Doc. E5–3590 Filed 7–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting (Washington, DC)

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Open Meeting (Washington, DC).

SUMMARY: Notice is hereby given that the Defense Base Closure and Realignment Commission will hold an open meeting on July 18, 2005 from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 3:30 p.m. at the Hart Senate Office Building, Room 216, Constitution Avenue, Washington DC 20510. The delay of this change notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The Commission will meet to receive comment from the Secretary of Defense on why certain base realignment and closure actions were not included among the actions recommended by the Secretary on May 13, 2005 *(http://www.brac.gov/docs/Principi-Rumsfeld.pdf)*, to hear testimony from the Comptroller General regarding the Government Accountability Office's analysis of the Department of Defense's 2005 selection process and recommendation for base closures and realignments (GAO–05–785, available at *http://www.gao.gov/new.items/d05785.pdf*), and to hear testimony from the Commission on Review of Overseas Military Facility Structure of the United States (The Overseas Basing Commission) regarding that commission's Report to the President and Members of Congress (available at *http://obc.gov/*). This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided.

DATES: July 18, 2005 from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 3:30 p.m.

ADDRESSES: Hart Senate Office Building, Room 216, Constitution Avenue, Washington DC 20510.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: July 5, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–13472 Filed 7–7–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting (Washington, DC)

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Open Meeting (Washington, DC).

SUMMARY: Notice is hereby given that the Defense Base Closure and Realignment Commission will hold an open meeting on July 19, 2005 from 1:30 p.m. to 5:30 p.m. at the Hart Senate Office Building, Room 216, Constitution Avenue, Washington DC 20510. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates. The Commission will meet to deliberate and vote whether to consider certain base realignment and closure actions that were not included among the actions recommended by the Secretary of Defense on May 13, 2005 *(http://www.brac.gov/docs/Principi-Rumsfeld.pdf)*. The delay of this change notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission. The Commission will also deliberate and vote on a portion of the actions recommended by the Secretary of Defense on May 13, 2005. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided.

DATES: July 19, 2005 from 1:30 p.m. to 5:30 p.m.

ADDRESSES: Hart Senate Office Building, Room 216, Constitution Avenue, Washington DC 20510.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: July 5, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–13473 Filed 7–7–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Open Meeting (Los Angeles, CA).

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on July 14, 2005 from 1 p.m. to 4:30 p.m. at the Westchester High School Auditorium, 7400 West Manchester Avenue, Los Angeles, California 90045. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The Commission delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in California and Guam that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. Sign language interpretation will be provided. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

DATES: July 14, 2005 from 1 p.m. to 4:30 p.m.

ADDRESSES: Westchester High School Auditorium, 7400 West Manchester Avenue, Los Angeles, CA 90045.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: July 5, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–13474 Filed 7–7–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Change to the Location of a Previously Announced Open Meeting (New Orleans, LA); Correction

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—change to the location of a previously announced open meeting (New Orleans, LA); correction.

SUMMARY: The Defense Base Closure and Realignment Commission published a document in the **Federal Register** of June 7, 2005, concerning an open meeting to receive comments from Federal, state and local government representatives and the general public on base realignment and closure actions in Florida, Louisiana and Mississippi that have been recommended by the Department of Defense (DoD). The location of this meeting has been changed.

The delay of this change notice resulted from a recent change to the meeting location. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Correction

In the **Federal Register** of June 7, 2005, in FR Doc. 05–11237, on page 33128, in the second column, correct the **SUMMARY**; and **ADDRESSES**; captions to read:

SUMMARY: Notice is hereby given that a delegation of Commissioners of the Defense Base Closure and Realignment Commission will hold an open meeting on July 12, 2005 from 9 a.m. to 3:30 p.m. at the Mahalia Jackson Theatre of the Performing Arts, 801 North Rampart Street, New Orleans, Louisiana 70116. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

ADDRESSES: Mahalia Jackson Theatre of the Performing Arts, 801 North Rampart Street, New Orleans, LA 70116.

Dated: July 5, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–13477 Filed 7–7–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: Notice; Defense Threat Reduction Agency Veterans' Advisory Board on Dose Reconstruction Meeting.

SUMMARY: The Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) will hold the first public meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR). The goal of the VBDR is to provide guidance and oversight of the dose reconstruction and claims

compensation programs for atomic veterans. In addition, the advisory board will assist the VA and DTRA in communicating with the veterans.

DATES: Wednesday, August 17, 2005 (12:30 to 5 p.m., break for dinner: 5–7 p.m., public comment session 7–10 p.m.) and Thursday, August 18, 2005 (8:30 a.m. to 12:15 p.m. and 1:45–2:45 p.m., break for lunch 12:15–1:45, public comment session 2:45–4:45 p.m.)

ADDRESSES: Hyatt Regency, 211 North Tampa Street, Tampa, FL 33602.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose Reconstruction hotline at 1–866–657–VBDR (8237).

SUPPLEMENTARY INFORMATION: The VBDR was established at the recommendation of the National Research Council report, entitled "Review of the Dose Reconstruction Program of the Defense Threat Reduction Agency." The report recommended the need to establish an advisory board which will provide suggestions for improvements in dose reconstruction and claim adjudication procedures.

Radiation dose reconstruction has been carried out by the Department of Defense under the Nuclear Test Personnel Review (NTPR) program since the 1970s. DTRA is the executive agent for the NTPR program which provides participation data and actual or estimated radiation dose information to veterans and the VA.

Board members were selected to fulfill the statutory requirements mandated by Congress in Section 601 of Pub. L. 108–183. The Board was appointed on June 3, 2005, and is comprised of 16 members. Board members were selected to provide expertise in historical dose reconstruction, radiation health matters, risk communications, radiation epidemiology, medicine, quality management, decision analysis and ethics in order to appropriately enable the VBDR to represent and address veterans' concerns.

The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), PL 92–463, which sets forth stands for the formation and conduct of government advisory committees.

Additional information may be found at *http://vbdr.org.*

Dated: July 1, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–13471 Filed 7–7–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meetings: Independent Review Panel To Study the Relationships Between Military Department General Counsels and Judge Advocates General

AGENCY: Department of Defense.

ACTION: Notice; Meeting of the Independent Review Panel to Study the Relationships between Military Department General Counsels and Judge Advocates General—Open Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96–463, notice is hereby given that the Independent Review Panel to Study the Relationships between Military Department General Counsels and Judge Advocates General will hold an open meeting at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, on July 28–29, 2005, from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m. The Panel will meet to conduct deliberations and to address other matters the Panel deems appropriate concerning the relationships between the legal elements of their respective Military Departments. These sessions will be open to the public, subject to the availability of space. In keeping with the spirit of FACA, the Panel welcomes written comments concerning its work from the public at any time. Interested citizens are encouraged to attend the sessions.

DATES: July 28–29, 2005: 8:30 a.m.—11:30 a.m., and 1 p.m.—4 p.m.

Location: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit written comments may contact: Mr. James R. Schwenk, Designated Federal Official, Department of Defense Office of the General Counsel, 1600 Defense Pentagon, Arlington, Virginia 20301–1600, Telephone: (703) 697–9343, Fax: (703) 693–7616, *schwenkj@dodgc.osd.mil.*

Interested persons may submit a written statement for consideration by the Panel at any time prior to July 21, 2005.

Dated: July 5, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–13481 Filed 7–7–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,846,345: Synthesis of Metal Nanoparticle Compositions from Metallic and Ethynyl Compounds, Navy Case No. 83,778.//U.S. Patent No. 6,884,861: Metal Nanoparticle Thermoset and Carbon Compositions from Mixtures of Metallocene-Aromatic-Acetylene Compounds, Navy Case No. 82,591.// U.S. Patent No. 6,890,504: Polymeric and Carbon Compositions with Metal Nanoparticles, Navy Case No. 84,963.// U.S. Patent Application No. 09/885,255: Probabilistic Neutral Network for Multi-Criteria Fire Detector, Navy Case No. 83,367.//U.S. Patent Application No. 10/216,470: Bulk Synthesis of Carbon Nanotubes from Metallocene and Oranometallic Transition Metal Complexes of Ethynyl Moieties, Navy Case No. 83,777.//U.S. Patent Application No. 10/652,082: Polymeric and Carbon Compositions with Metal Nanoparticles, Navy Case No. 84,962.// U.S. Patent Application No. 10/750,637: Catalytic Surfaces for Active Protection from Air/water Borne Toxins by Passivation and Adsorption of Toxic Materials, Navy Case No. 84,598.//U.S. Patent Application No. 10/875,805: Synthesis of Metal Nanoparticle Compositions from Metallic and Ethynyl Compounds, Navy Case No. 96,386.//U.S. Patent Application No. 10/875,806: Synthesis of Metal Nanoparticle Compositions from Metallic and Ethynyl Compounds, Navy Case No. 96,414.//U.S. Patent Application No. 10/875,807: Synthesis of Metal Nanoparticle Compositions from Metallic and Ethynyl Compounds, Navy Case No. 96,387.//U.S. Patent Application No. 11/018,678: Highly Aromatic Compounds and Polymers as Precursors to Carbon Nanotube and Metal Nanoparticle Compositions in Shaped Solid, Navy Case No. 96,675 and any continuations, continuations in part, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW.,

Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: June 30, 2005.

I.C. Le Moyne Jr.

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–13428 Filed 7–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,787,885 entitled "Improved Low Temperature Hydrophobic Direct Wafer Bonding," Navy Case No. 83,684; U.S. Patent Application Serial No. 10/353,952 entitled "Microwave-Attenuating Composite Materials, Methods for Preparing the Same, Intermediates for Preparing the Same, Devices Containing the Same, Methods for Preparing Such a Device, and Methods of Attenuation Microwaves, Navy Case No. 83,273 and Navy Case No. 96,792 entitled "Sheath Flow Method and Apparatus for Laminar Flow Systems" and any continuations, continuations in part, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Ave., SW., Washington, DC 20375–5320, tel. 202–767–3083. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 30, 2005.

I.C. Le Moyne Jr.

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–13429 Filed 7–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,777,937: Nuclear Quadrupole Resonance Method and Apparatus, Navy Case No. 82,481 and any continuations, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: June 30, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–13430 Filed 7–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meetings.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet to hold classified briefs of proprietary information. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to the assessment of modern lighter than air applications and their potential value for the full spectrum of Navy missions from an affordability and utility perspective and to meet current and new threat needs. The sessions will also identify, review, and assess technologies for reducing fuel consumption and for militarily useful alternative fuels.

DATES: The meetings will be held on Monday, July 18, 2005, through Friday, July 22, 2005, from 8 a.m. to 5 p.m.; Monday, July 25, 2005, through Thursday, July 28, 2005, from 8 a.m. to 5 p.m.; and Friday, July 29, 2005, from 8 a.m. to 11 a.m.

ADDRESSES: The meetings will be held at the Space and Naval Warfare Systems Center, San Diego, CA 92152.

FOR FURTHER INFORMATION CONTACT: Dr. Sujata Millick, Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Arlington, VA 22203–1995, 703–696–6769.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to executive sessions that will include discussions and technical examination of information related to lighter than air and fuels technologies. These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The proprietary, classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portions of the meetings. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meetings be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1) and (4).

Dated: June 29, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–13423 Filed 7–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 1, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: Student Aid Report (SAR).
Frequency: Annually.
Affected Public: Individuals or household (primary).
Reporting and Recordkeeping Hour Burden:
Responses: 24,767,197;
Burden Hours: 5,242,388.
Abstract: The SAR is used to notify all applicants of their eligibility to receive federal student aid for postsecondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2808. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–13411 Filed 7–7–05; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 8, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: July 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR).
Frequency: SPP—every six years; APR—annually.
Affected Public: State, local, or tribal gov't, SEAs or LEAs; not-for-profit institutions; Federal government.
Reporting and Recordkeeping Hour Burden:
Responses: 56.
Burden Hours: 14,000.
Abstract: The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004,

became Public Law 108–446. In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each Lead Agency must have in place a performance plan that evaluates the Lead Agency's efforts to implement the requirements and purposes of Part C and describe how the Lead Agency will improve such implementation. This plan, referenced here-to-after, is called the Part C State Performance Plan (Part C—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) and 20 U.S.C. 1442 the Lead Agency shall report annually to the public on the performance of each Part C program located in the State on the targets in the Lead Agency's performance plan. The Lead Agency shall report annually to the Secretary on the performance of the State under the Lead Agency's performance plan. This report, referenced here-to-after, is called the Part C Annual Performance Report (Part C—APR).

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2706. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: A Study of the Addition of Literacy Services for Vocational Rehabilitation Consumers.

Frequency: Annually.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 14,522.

Burden Hours: 6,835.

Abstract: This submission is for the collection of data for the "Evaluation of Projects Demonstrating the Use of Adult Education Literacy Services by State Vocational Rehabilitation Agencies to Improve Earnings of Individuals with Disabilities." The data collection to be approved includes standardized testing instruments, case file summary forms, a teacher rating form, a telephone interview form, and site visit interview and focus group guides.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2805. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–13412 Filed 7–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education, Overview Information, School Dropout Prevention Program; Notice inviting applications for new awards for fiscal year (FY) 2005.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.360A.

DATES: Application Available: July 8, 2005.

Deadline for Transmittal of Applications: August 17, 2005.

Eligible Applicants: State educational agencies (SEAs), as defined in 34 CFR 77.1.

Estimated Available Funds: $4,500,000.

Estimated Range of Awards: $2,000,000–$2,500,000 for the 36-month project period.

Note: The Department will fund multi-year projects for a project period of 36 months entirely from the FY 2005 appropriation in order to assist grantees in meeting the statutory purposes of the School Dropout Prevention (SDP) program and the requirements of this notice.

Estimated Average Size of Awards: $2,200,000.

Maximum Award: Applications that propose a budget exceeding $2,500,000 for a project period of 36 months will not be reviewed as part of the regular application process. However, if after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary may choose to review those additional applications that requested funds exceeding the maximum amount specified. If the Secretary chooses to fund any of those additional applications, applicants will be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program supports the development and implementation of an effective, sustainable, and coordinated school dropout prevention and reentry programs. An additional purpose is for SEAs to create collaborations with other agencies and work with local educational agencies (LEAs) to assist schools in dropout prevention and reentry activities, including using eighth grade assessments and other data to develop and implement individual performance plans for students entering the ninth grade who are at risk of failing to meet challenging State academic standards and of dropping out of high school. The dropout prevention and reentry strategies implemented by the SEA must be scientifically-based, sustainable, and widely replicated.

SEAs must use the funds received under this competition to support activities—

(1) in schools that—

(a) serve students in grades 6 through 12; and

(b) have annual school dropout rates that are above the State average annual dropout rate; or

(2) in the middle schools that feed students into the schools described above.

Priorities: These priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program (NFP), published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2005 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

The priorities are:

Priority 1—Collaboration with other agencies and Priority 2—Individual Performance Plans for At-Risk Incoming Ninth Grade Students

The requirements for meeting these priorities are in the NFP, published elsewhere in this issue of the **Federal Register**.

Application Requirements

Additional requirements for all projects funded through this competition are in the NFP, published elsewhere in this issue of the **Federal Register**.

These additional requirements are: *Eligibility Requirement—State Educational Agencies, Evaluation Requirements, Performance Measures Requirements* and *Requirements for Accountability for Results.*

Definitions: In addition to the definitions in the authorizing statute and 34 CFR 77.1, the definitions in the NFP, published elsewhere in this issue of the **Federal Register**, apply.

Program Authority: 20 U.S.C. 6551, *et seq.*

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99. (b) The priorities, requirements, definitions, and selection criteria contained in the NFP, published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,500,000.

Estimated Range of Awards: $2,000,000–$2,500,000 for the 36-month project period.

Note: The Department will fund multi-year projects for a project period of 36 months entirely from the FY 2005 appropriation in order to assist grantees in meeting the statutory purposes of the SDP and the requirements of this notice.

Estimated Average Size of Awards: $2,200,000.

Maximum Award: Applications that propose a budget exceeding $2,500,000 for a project period of 36 months will not be reviewed as part of the regular application process. However, if after the Secretary selects applications to be funded, it appears that additional funds remain available, the Secretary may choose to review those additional applications that requested funds exceeding the maximum amount specified. If the Secretary chooses to fund any of those additional applications, applicants will be required to work with the Department to revise their proposed budgets to fit within the appropriate funding range.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs, as defined in 34 CFR 77.1.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions (Section 1823(a)(1)(F) of the Elementary and Secondary Education Act of 1965, as amended).

IV. Application and Submission Information

1. *Address To Request Application Package:* Valerie Randall-Walker, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 11081, Washington, DC 20202–7241. Telephone: (202) 245–7794 or by e-mail: *dropoutprevention@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Applications must include the State's event dropout rate and the event dropout rate of each school to be served under this grant. Definitions of "State event dropout rate" and "school event dropout rate" are included in both the NFP, published elsewhere in this issue of the **Federal Register**, and the application package for this program. Other requirements concerning the content of an application, together with the forms you must submit, are in the application package.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We highly encourage you to limit Part III to the equivalent of no more than 25 pages.

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit recommendation does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

3. *Submission Dates and Times:* Applications Available: July 8, 2005.

Deadline for Transmittal of Applications: August 17, 2005.

Applications for grants under this program may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The SEA's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.360A),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260, or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center—Stop 4260, Attention: (CFDA Number 84.360A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.360A),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt

acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from the NFP, published elsewhere in this issue of the **Federal Register**. The specific selection criteria to be used for this competition are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administration and National Policy Requirements:* We identify administration and national policy requirements in the application package and reference these and other requirements in the *Application Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Application Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* We explain the requirements for performance measures and accountability for results applicable to this program in the *Performance Measures Requirements* and *Requirements for Accountability for Results* sections of the *Additional Requirements* in the NFP, published elsewhere in this issue of the **Federal Register**.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Valerie Randall-Walker, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 11081, Washington, DC 20202–7241. Telephone: (202) 245–7794 or by e-mail: *dropoutprevention@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index/html*.

Dated: July 5, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–13578 Filed 7–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

School Dropout Prevention Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces priorities, requirements, definitions, and selection criteria under the School Dropout Prevention (SDP) program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2005 and later years. We take this action to further the purpose of the SDP program, which is to support the development and implementation of effective, sustainable, and coordinated school dropout prevention and reentry programs.

DATES: These final priorities, requirements, definitions, and selection criteria are effective August 8, 2005.

FOR FURTHER INFORMATION CONTACT: Valerie Randall-Walker, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 11081, Washington, DC 20202–7241. Telephone: (202) 245–7794 or via Internet: *dropoutprevention@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

With the enactment of the No Child Left Behind Act of 2001 (NCLB), our Nation made a commitment to closing the achievement gap between disadvantaged and minority students and their peers and to changing the culture of America's schools so that all students receive the support and high-quality instruction they need to meet higher expectations. A critical part of this challenge, at the high school level, is reducing the number of young people who disengage and drop out of school. As several recent national studies have found, a staggering number of youth fail to graduate on time.

The complexity of the dropout problem requires the attention of multiple agencies because numerous factors contribute to a student's decision to drop out. Therefore, successful dropout prevention and reentry activities should involve many agencies and community organizations and institutions in strong collaborative activities. By combining their expertise and resources, these entities can achieve much more than they could individually. Through these priorities, requirements, definitions, and selection criteria, we limit eligibility for SDP funding to State educational agencies (SEAs) and, under *Priority 1*, give priority to an SEA that partners with other public or private agencies in its efforts to reduce the dropout rate in high schools (grades 9 through 12) where the annual dropout rate exceeds the State average.

Another vital element for successful dropout prevention and reentry programs is the early identification of at-risk students and the implementation of a customized set of services and

interventions that address the needs of those students. *Priority 2* supports projects in which applicants work with local educational agencies (LEAs) to use eighth grade assessment and other data to identify those students who could benefit from intensive early assistance. We intend that, by incorporating these strategies into the SDP program, the Department will make grants to SEAs for activities that have the highest probability of reducing dropout rates.

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on May 13, 2005 (70 FR 25556) (NPP). Except for minor editorial and technical revisions, there are no differences between the NPP and this notice of final priorities, requirements, definitions, and selection criteria (NFP).

Analysis of Comments and Changes

In response to our invitation in the NPP, two parties submitted three comments on the proposed priorities. An analysis and discussion of the comments and our responses follows.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comment: One commenter asked whether SEAs could partner with juvenile justice or other criminal justice agencies to satisfy the collaboration requirement of the SDP project.

Discussion: As specified in the NPP, juvenile justice or criminal justice agencies are among the agencies with which SEAs may partner in carrying out the SDP project.

Changes: None.

Comments: One commenter asked whether applicants could consider information other than eight grade assessment data to identify students who are at risk of failing to meet challenging State academic standards and dropping out of high school. The commenter also suggested that we identify specific factors that may place a student "at-risk" in the *Requirements* or *Definitions* section.

Discussion: Priority 2 supports projects in which applicants work with LEAs to assist schools in using eighth grade assessment and other data to develop and implement individual performance plans for students who are at risk of failing to meet challenging State academic standards and of dropping out of school. It does not limit applicants to using only eighth grade assessment data to identify students who may need assistance. Although researchers have identified a large number of non-academic "risk" factors that appear to be correlated with dropping out of high school, such as, for example, having a sibling who has dropped out of school or a parent who receives public assistance, there is little consensus about the relative significance of these factors or a good understanding of how they may interact with other observed and unobserved factors that may contribute to an individual's decision to drop out of high school. We decline, therefore, to require or encourage applicants to use any specific non-academic "risk" factors in identifying students for whom the development of individual performance plans is appropriate. We defer to applicants to determine what information they will use in addition to eighth grade assessment data to identify students who are at-risk of failing to meet State academic standards and dropping out of high school.

Changes: None.

Comment: One commenter suggested amending the definition of a high school dropout to clarify that it excludes individuals who may not only have formally transferred to another public school district, a nonpublic school, or a State-approved educational program, but who may have enrolled in one of these three alternatives.

Discussion: Section 1829 of the Elementary and Secondary Education Act, as amended (ESEA) requires applicants to use the annual event school dropout rate as determined in accordance with the National Center for Education Statistics' (NCES') Common Core of Data. SEAs must use funds awarded under this program to support activities in schools that have annual school event dropout rates higher than the State average event dropout rate. The definition that must be used in this competition is the definition used by NCES.

Changes: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)) or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Priority 1—Collaboration With Other Agencies

Under this priority, an applicant must include in its application evidence that other public or private entities will be involved in, or provide financial support for, the implementation of the activities described in the application. Applicants may involve such State agencies as those responsible for administering postsecondary education, Title I of the Workforce Investment Act, Temporary Assistance for Needy Families, Medicaid, the State Children's Health Insurance Program, foster care, juvenile justice, and others. Applicants also may collaborate with business and industry, civic organizations, foundations, and community- and faith-based organizations, among other private-sector entities. Acceptable evidence of collaboration is a memorandum of understanding or other document signed by the principal officer of each participating agency that identifies (1) how the agency will be involved in the implementation of the project or (2) the financial resources (cash or in-kind) that it will contribute to support the project, or both.

Priority 2—Individual Performance Plans for At-Risk Incoming Ninth Grade Students

Under this priority, an applicant must work with LEAs to assist schools in using eighth grade assessment and other data to develop and implement (in consultation with parents, teachers, and counselors) individual performance plans for students entering the ninth grade who are at-risk of failing to meet challenging State academic standards and of dropping out of high school. The plans must identify specific interventions to improve the academic achievement of these students and other supports and services they need in order to succeed in high school.

Additional Requirements

The Assistant Secretary announces the following requirements for the SDP program. We may apply these requirements in any year in which this program is in effect.

Eligibility Requirement—State Educational Agencies

To be eligible for funding under this program, an applicant must be an SEA, as defined in 34 CFR 77.1.

Evaluation Requirements

We require that each applicant include in its application a plan to support an independent, third-party evaluation of its SDP project and that the applicant reserve not less than 10 percent of its grant award for this evaluation. At a minimum, the evaluation must—

(a) Be both formative and summative in nature;

(b) Include performance measures that are clearly related to the intended outcomes of the project and the Government Performance and Results Act (GPRA) indicators for the SDP program described elsewhere in this notice;

(c) Measure the effectiveness of the project, including a comparison between the intended and observed results and, if appropriate, a demonstration of a clear link between the observed results and the specific treatment given to project participants;

(d) Measure the extent to which the SEA implements an effective, sustainable, and coordinated school dropout prevention and reentry program; and

(e) Measure the extent to which the project implements research-based strategies and practices.

In addition, applicants must submit their proposed project evaluation designs to the Department for review and approval prior to the end of the second month of the project period.

Each evaluation must include: (i) an annual report for each of the first two years of the project period, and (ii) a final report that would be completed at the end of the third year of implementation and that would include information on implementation during the third year as well as information on the implementation of the project across the entire project period. Each grantee must submit each of these annual reports to the Department along with its required annual performance report.

Performance Measures Requirements

Under the GPRA, the Department is currently using the following two performance measures to assess the effectiveness of the SDP program: (1) the dropout rate in schools receiving program funds, and (2) the percentage of students reentering schools who complete their secondary education. Applicants for a grant under this program are advised to consider these two performance measures in conceptualizing the approach and evaluation of their proposed project. To assist the Department in assessing progress under the first measure, an applicant must use its State event dropout rate as the GPRA indicator and submit, as part of its application to the Department, a projected State event dropout rate, for each year of the project. If funded, applicants would then be asked to collect and report data for this indicator in their performance and final reports for each year of the project. We will notify grantees if they will be required to provide any additional information related to the two measures.

Requirements for Accountability for Results

Applicants must identify in their applications at least two specific performance indicators and annual performance objectives for the schools that receive services and technical assistance through projects funded under this program, in addition to the two GPRA indicators. Applicants may identify and report on additional student indicators, such as graduation rates; year-to-year retention; rates of average daily attendance; the percentage of secondary school students who score at the proficient or advanced levels on the reading/English language arts and mathematics assessments used by the State to measure adequate yearly progress under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); student achievement and gains in English proficiency; and the incidence of school violence, drug and alcohol use, and disciplinary actions.

Applicants must identify annual performance objectives for the two GPRA indicators and the two additional indicators identified in the application. The Department intends to negotiate these performance levels with potential grantees.

Applicants must identify all outcomes in their evaluation plan that are relevant to the scope of the project and will assist in continuous improvement of the services offered.

Definitions

In addition to the definitions in the authorizing statute and 34 CFR 77.1, the following definitions also apply to this program. We may apply these definitions in any year in which we conduct a SDP competition.

High school dropout means an individual who—

(a) Was enrolled in a district in grades 9 through 12 at some time during the preceding school year;

(b) Was not enrolled at the beginning of the current school year;

(c) Has not graduated or completed a program of studies by the maximum age established by a State;

(d) Has not transferred to another public school district, a nonpublic school, or a State-approved educational program; and

(e) Has not left school because of death, illness, or a school-approved absence.

State event dropout rate means the dropout rate calculated by dividing the number of high school dropouts (as defined elsewhere in this notice) in the State by the total number of students enrolled in grades 9 through 12 in public schools in the State during the current school year. This calculation is based upon the annual school event dropout rate calculation of the National Center for Education Statistics' Common Core of Data.

School event dropout rate means the dropout rate calculated by dividing the number of high school dropouts (as defined elsewhere in this notice) in a school by the total number of students enrolled in grades 9 through 12 in that school during the current school year.

Selection Criteria

We establish the following selection criteria to evaluate applications for new grants under this program. We may apply these selection criteria in any year we conduct a SDP competition.

Quality of Project Design

In determining the quality of the project design, we will consider the extent to which—

(a) The applicant demonstrates its readiness to implement a comprehensive and coordinated statewide dropout and reentry program;

(b) The activities described in the application are evidence-based and likely to be successful in improving the graduation rate within the State, particularly among youth who are at the greatest risk of dropping out;

(c) Other public and private agencies will support and participate in the implementation of the proposed project; and

(d) The technical assistance activities that will be undertaken by the applicant are likely to be successful in helping local educational agencies use eighth grade assessment and other data to develop individual performance plans for entering ninth graders who are at risk of failing to meet challenging State

academic standards and of dropping out of high school.

Adequacy of Resources

In determining the adequacy of resources for the proposed project, we consider the following factors:

(a) The extent of the cash or in-kind support the SEA will provide.

(b) The extent of the cash or in-kind support other public and private agencies will contribute to the implementation of the proposed project.

Quality of the Management Plan

In determining the quality of the management plan for the proposed project, we consider the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including the extent to which the plan clearly defines the roles and responsibilities of each agency and its key personnel and establishes detailed timelines and milestones for accomplishing each of the project tasks.

Quality of the SDP Project Evaluation

In determining the quality of the evaluation, we consider the following factors:

(a) The extent to which the methods of evaluation will yield accurate and reliable data for each of the required performance indicators.

(b) The extent to which the evaluation will produce reports or other documents at appropriate intervals to enable the agencies, organizations, or institutions participating in the project to use the data for planning and decisionmaking for continuous program improvement.

(c) Whether the independent third-party evaluator identified in the application has the necessary background and expertise to carry out the evaluation.

Executive Order 12866

This NFP and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the NFP justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index/html.*

Program Authority: 20 U.S.C. 6551, *et seq.*

(Catalog of Federal Domestic Assistance Number 84.360A School Dropout Prevention Program)

Dated: July 5, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–13579 Filed 7–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–130–000]

Dominion Cove Point LNG, L.P.; Notice of Technical Conference

July 1, 2005.

On Wednesday, July 27, 2005, at 8:30 a.m. (EDT), staff of the Office of Energy Projects will convene a cryogenic design and technical conference regarding the proposed Cove Point Expansion Project. The cryogenic conference will be held in the Holiday Inn Select, located at 155 Holiday Drive, Solomons, MD 20688. For hotel details call (410) 326–6311.

In view of the nature of critical energy infrastructure information and security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested Federal, State, and local agencies. Any person planning to attend the July 27th cryogenic conference *must register* by close of business on Monday, July 25, 2005. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the referenced online link) to (202) 208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. Upon arrival at the hotel, check the reader board in the hotel lobby for venue. For additional information regarding the cryogenic conference, please contact Ghanshyam Patel at (202) 502–6431.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3605 Filed 7–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–048]

Virginia Electric and Power Company, dba Dominion Virginia Power/Dominion North Carolina Power; Notice Rejecting Request for Rehearing

July 1, 2005.

By order issued May 17, 2005,[1] Commission staff approved and modified a dissolved oxygen monitoring plan filed by the licensee for the Roanoke Rapids and Gaston Project No. 2009, located on the Roanoke River in Brunswick and Mecklenburg Counties, Virginia, and in Halifax, Northampton, and Warren Counties, North Carolina. On June 16, 2005, the North Carolina Department of Environment and Natural Resources (North Carolina DENR) filed a request for rehearing of the order, without an accompanying notice or motion to intervene.

[1] 111 FERC ¶ 62,170.

Under section 313(a) of the Federal Power Act, 16 U.S.C. 825l(a), a request for rehearing may be filed only by a party to the proceeding. While North Carolina DENR was an intervenor in the licensing proceedings for the Roanoke Rapids and Gaston Project, party status is not carried over to post-licensing proceedings.[2] Accordingly, in order for North Carolina DENR, whose water quality division was a consulted agency on the dissolved oxygen monitoring plan, to be a party to this proceeding, it must have filed a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214, not later than 30 days after issuance of the May 17, 2005 order (June 16, 2005).[3] As noted above, North Carolina DENR did not file a notice or motion to intervene and therefore, the request for rehearing is hereby rejected.

This notice constitutes final agency action. Request for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3604 Filed 7–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–713–000, ER05–713–001, and ER05–713–002]

KRK Energy; Notice of Issuance of Order

July 1, 2005.

KRK Energy (KRK) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. KRK also requested waiver of various Commission regulations. In particular, KRK requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by KRK.

On June 29, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by KRK should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is July 29, 2005.

Absent a request to be heard in opposition by the deadline above, KRK is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of KRK, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of KRK's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3607 Filed 7–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–6–023, EL04–135–025, EL02–111–043, and EL03–212–039]

Midwest Independent Transmission System Operator, Inc.; Ameren Services Co., et al.; Notice of Filing

July 1, 2005.

Take notice that on June 24, 2005, PJM Interconnection, L.L.C. (PJM) amended its May 17, 2005 filing in the above-captioned dockets. The May 17, 2005 filing revised Schedule 12 of the PJM open access transmission tariff. Specifically, on May 17 PJM filed two tariff sheets designated as "Fourth Revised Sheet No. 270A." By the June 24 amendment, PJM seeks to designate the second "Fourth Revised Sheet No. 270A," as "Original Sheet No. 270A.01." PJM requests an effective date of June 1, 2005.

PJM states that copies of this filing have been served on all PJM members and the utility regulatory commissions in the PJM region.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the

[2] See Joseph M. Keating, 40 FERC ¶ 61,254 (1987).

[3] See Pacific Gas and Electric Company, 40 FERC ¶ 61,035 (1987).

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on July 11, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3606 Filed 7–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–413–000, CP04–414–000, and CP04–415–000]

Entrega Gas Pipeline Inc.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Entrega Pipeline Project

July 1, 2005.

The environmental staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) on the interstate natural gas pipeline transmission facilities proposed by Entrega Gas Pipeline Inc. (Entrega) in the above-referenced dockets.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). Its purpose is to inform the Commission, the public, and other permitting agencies about the potential adverse and beneficial environmental impacts associated with the proposed project and its alternatives, and to recommend practical, reasonable, and appropriate mitigation measures which would avoid or reduce any significant adverse impacts to the maximum extent practicable and, where feasible, to less than significant levels. The final EIS concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact.

The Entrega Pipeline Project involves the construction and operation of a new interstate natural gas pipeline system that would extend between a proposed Meeker Hub in Rio Blanco County, Colorado; to Wamsutter, in Sweetwater County, Wyoming; and continuing on to the Cheyenne Hub in Weld County, Colorado. The final EIS assesses the potential environmental effects of the construction and operation of the following facilities in Colorado and Wyoming:

- About 328.1 miles of new pipeline of 36- and 42-inch-diameter pipeline—

—136.3 miles of 36-inch-diameter pipeline, with 86.1 miles in Colorado (Rio Blanco and Moffat Counties) and 50.2 miles in Wyoming (Sweetwater County); and

—191.8 miles of 42-inch-diameter pipeline, with 183.1 miles in Wyoming (Sweetwater, Carbon, Albany, and Laramie Counties) and 8.7 miles in Colorado (Larimer and Weld Counties);

- Three new compressor stations (the Meeker Hub and Bighole Compressor Stations in Colorado, the Wamsutter Compressor Station in Wyoming);
- Seven meter stations at interconnections with other pipeline systems (three associated with the new compressor stations, one of which would be constructed by Wyoming Interstate Company), four at the new Cheyenne Hub Metering Station in Wyoming;
- Four pig launchers and four pig receivers (six associated with compressor and metering stations, one launcher and one receiver at the new Arlington Pigging Station in Wyoming);
- 22 mainline valves (5 valves at compressor and metering stations, 17 valves along the pipeline ROW); and
- Other associated facilities, such as access roads and powerlines.

The proposed project would be capable of transporting up to 1.5 billion cubic feet of natural gas per day from the Meeker Hub Compressor Station to interconnections at:

- Wamsutter, Wyoming with the Colorado Interstate Gas Company (CIG) and Wyoming Interstate Company transmission systems that serve markets east and west of Wamsutter; and
- The Cheyenne Hub (Weld County, Colorado) with CIG, Cheyenne Plains Gas Pipeline Company, Trailblazer Pipeline Company, and Public Service Company of Colorado. These systems would transport gas to markets in the Midwest and Central U.S. and the Eastern Slope south of the Cheyenne Hub.

The purpose of the Entrega Pipeline Project is to transport natural gas from supply basins in the central Rocky Mountains to interstate pipelines at Wamsutter and the Cheyenne Hub. From these points, the gas could be transported to markets in the West, the Midwest, or the Central United States, depending on the delivery location specified by the shipper. The need for the project arises from the current and projected increase of natural gas production in the Rocky Mountain region, which is occurring without a concurrent increase in pipeline capacity to transport this gas out from the production basins and into the interstate pipeline network.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the FERC's Public Reference Room identified above. In addition, copies of the final EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who have requested the draft EIS; libraries and newspapers in the project area; and parties to this proceeding.

In accordance with Council on Environmental Quality (CEQ) regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency (EPA) publishes a Notice of Availability of the final EIS in the **Federal Register**. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published by the EPA, allowing both periods to run concurrently. The Commission's decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits (*i.e.*, CP04–413) in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676; or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also

provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,
Secretary.
[FR Doc. E5–3609 Filed 7–7–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12484–000]

Metro Hydroelectric Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings and Study Request Workshop, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

July 1, 2005.

a. *Type of Filing:* Notice of Intent To File License Application for an Original License and Pre-Application Document; Commencing Licensing Proceeding.

b. *Project No.:* 12484–000.

c. *Date Filed:* May 5, 2005.

d. *Submitted by:* Metro Hydroelectric Company (MHC).

e. *Name of Project:* Metro Hydroelectric Project.

f. *Location:* The proposed Metro Hydroelectric Project would be located on the Cuyahoga River in Summit County, Ohio. The project would not affect Federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* M. Clifford Phillips, Metro Hydroelectric Company, LLC, 150 North Miller Road. Suite 450 C, Fairlawn, Ohio 44333, (330) 869–8451.

i. *FERC Contact:* Timothy Konnert (202) 502–6359 or via e-mail at *timothy.konnert@ferc.gov.*

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Metro Hydroelectric Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Metro Hydroelectric Company filed a Pre-Application Document (PAD), including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. The Commission issued Scoping Document 1 on July 1, 2005.

n. Copies of the PAD and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and SD1 as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Metro Hydroelectric Project) and number (P–12484–000), and bear the heading "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by August 27, 2005.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

p. At this time, Commission staff intends to prepare a single Environmental Assessment for the project, in accordance with the National Environmental Policy Act.

Scoping Meetings

We will hold two scoping meetings at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date and Time: Wednesday, July 27, 2005, 9:30 a.m. (EST).
Location: Sheraton Suites Akron/Cuyahoga Falls, 1989 Front Street, Cuyahoga Falls, Ohio.

Evening Scoping Meeting

Date and Time: Wednesday, July 27, 2005, 6:30 p.m. (EST).
Location: Sheraton Suites Akron/Cuyahoga Falls, 1989 Front Street, Cuyahoga Falls, Ohio.
For Directions: Please call Clifford Phillips at (330) 869–8451.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the

"eLibrary" link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visit

MHC will conduct a tour of the proposed project on Tuesday, July 26, 2005, starting at 1:30 p.m. All participants interested in attending should meet at the north parking lot for the Gorge Metro Park on Front Street. Anyone in need of directions should contact Mr. Clifford Phillips of MHC at (330) 869–8451.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present a proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and tribal permitting and certification processes; and (5) discuss requests by any Federal or State agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Scoping Meeting Procedures

The scoping meetings will be recorded by a stenographer and will become part of the formal Commission record on the project.

Study Request and Process Plan Workshop

To assist parties in the development of their study requests (pertaining to format and the study criteria outlined in the Commission's regulation 18 CFR 5.8), and further development of the project's process plan, MHC will be hosting a workshop on July 26, 2005, at the Sheraton Suites Akron/Cuyahoga Falls, 1989 Front Street, Cuyahoga Falls, Ohio. The workshop will begin at 9 a.m. (EST). For directions, please contact Clifford Phillips of MHC at (330) 869–8451.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3608 Filed 7–7–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2005–0001, FRL–7926–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Economic Valuation of Avoiding Exposure to Arsenic in Drinking Water, EPA ICR Number 2191.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 6, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OA–2005–0001, to EPA online using EDOCKET (our preferred method), by e-mail to oei.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Maguire, Office of Policy, Economics and Innovation, National Center for Environmental Economics, Mail Code 1809T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–2273; fax number: (202) 566–2339; e-mail address: *maguire.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OA–2005–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select Asearch," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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 EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are households in the State of Maine.

Title: Economic Valuation of Avoiding Exposure to Arsenic in Drinking Water.

Abstract: The purpose of this information collection request is to conduct 4 focus groups of no more than nine individuals and to conduct a survey of 2,000 households in the State of Maine regarding their willingness to pay to avoid exposure to arsenic in drinking water. Groundwater is an important source of drinking water in the United States. In Maine about half of the population depends on private wells for drinking water and about three-quarters of these wells are drilled

into bedrock where arsenic may occur naturally. Recent testing of well water indicates that about 10 percent of the private wells in Maine have arsenic concentrations above the Federal drinking water standard of 0.10 mg/l.

Although people on public water supplies are protected from elevated levels of arsenic in their tap water, households with private wells are not afforded such protection. Chronic exposure to low concentrations of arsenic through drinking water causes cancer, and arsenic is the only carcinogen with a demonstrated causal link between drinking-water exposure and bladder cancer. Households with elevated levels of arsenic in their well water can undertake a variety of actions to avoid exposure. They can purchase bottled water to drink or install point-of-use (*e.g.*, kitchen sink) or point-of-entry (*e.g.*, complete household) systems. This study will scrutinize the behavioral response of households to information regarding levels of arsenic in drinking water from private wells.

To fully assess behavioral responses to exposure to arsenic in drinking water, this study will combine the results of three analyses: a hedonic property-value study, an averting behavior study, and a conjoint analysis. One survey instrument, with two versions, will be used to collect data for the averting behavior and conjoint studies. This instrument is the subject of this information collection request. The survey will focus on public support for government programs aimed at reducing arsenic levels in drinking water and household decisions to avoid risks associated with arsenic in drinking water. The results of this research will facilitate the estimate of value of statistical life and value of statistical cancer estimates which will assist in assessing the value households place on programs aimed at reducing such exposure. Responses to both the focus groups and full survey are voluntary and will be kept confidential. This project is being conducted in conjunction with the University of Maine via a cooperative agreement.

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.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The public reporting burden for this information collection request is estimated to average 2 hours per response for the focus groups and 24 minutes per response for the full survey.

Estimated Number of Focus Group Respondents: 36.

Estimated Reporting Burden for Focus Group Respondents: 2 hours.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Focus Group Respondents: 72 hours.

Estimated Number of Survey Respondents: 2000.

Estimated Reporting Burden for Survey Respondents: 0.4 hours.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Survey Respondents: 800 hours.

Estimated Total Reporting Burden: 872 hours.

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.

Dated: June 30, 2005.

Al McGartland,

Director, National Center for Environmental Economics, Office of Policy, Economics and Innovation.

[FR Doc. 05–13488 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6665–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050030, ERP No. D–NPS–K61160–CA, Non-Native Deer Management Plan of Axis Deer (Axis axis) and Fallow Deer (Dama dama), Implementation, Point Reyes National Seashore (PRNS) and Golden Gate National Recreation Area, Marin County, CA.

Summary: EPA had no objections to this project.

Rating LO

EIS No. 20050096, ERP No. D–NRC–F06026–IL, Early Site Permit (ESP) at the Exelon ESP Site, Application for ESP on One Additional Nuclear Unit, within the Clinton Power Station (CPS), NUREG–1815, DeWitt County, IL.

Summary: EPA expressed environmental concerns due to impacts to wetlands and impaired water bodies. EPA also requested clarification of the purpose and need and radiation issues.

Rating EC2

EIS No. 20050105, ERP No. D–AFS–F65050–MI, Huron-Manistee National Forests, Proposed Land and Resource Management Plan, Implementation, Several Counties, MI.

Summary: EPA expressed concerns regarding potential impacts to water quality from the restoration of 58,000 acres of large-scale (500+ acres) clearings and from mining. EPA also requested clarification of potential impacts to wildlife and habitat from the proposed increase in snowmobile trails.

Rating EC2

EIS No. 20050107, ERP No. D–AFS–F65051–IL, Shawnee National Forest Proposed Land and Resource Management Plan Revision, Implementation, Alexander, Gallatin, Hardin, Jackson, Johnson, Massac, Pope, Union and Williamson Counties, IL.

Summary: EPA has no objections to the preferred alternative.

Rating LO

EIS No. 20050113, ERP No. D–BLM–K65439–NV, Sloan Canyon National Conservation Area, Resource Management Plan, Implementation, Cities of Las Vegas and Henderson, Clark County, NV.

Summary: EPA expressed environmental concerns related to mitigation measures and the cumulative impacts analysis for air quality and water resources.

Rating EC2

EIS No. 20050114, ERP No. D–AFS–F65053–IN, Hoosier National Forest Land and Resource Management Plan, Implementation, Brown, Crawford, Dubois, Jackson, Lawrence, Martin, Monroe, Orange, Perry Counties, IN.

Summary: EPA expressed concerns related to early- and late-successional management and the timeline for conversion of non-native pines/restoration of oak-hickory habitat and the seasonal trail closures in the wilderness area.

Rating EC2

EIS No. 20050118, ERP No. D–AFS–F65054–MI, Ottawa National Forest, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Baraga, Gogebic, Houghton, Iron, Marquette and Ontonagan Counties, MI.

Summary: EPA expressed environmental concerns related to potential impacts to water quality and on the management ATVs, deer, and old growth habitat. EPA suggested the final alternative emphasize late successional northern hardwoods and producing an old growth continuous canopy.

Rating EC2

EIS No. 20050128, ERP No. D–AFS–L65480–ID, Porcupine East, 9 Allotment Grazing Analysis Project, Authorizing Livestock Grazing, Caribou-Targhee National Forest, Dubois Ranger District, Centennial Mountains, Clark County, ID.

Summary: EPA expressed environmental concerns related to alternatives, and potential impacts to water quality/source water for drinking water.

Rating EC2

EIS No. 20050134, ERP No. D–AFS–L65481–00, Caribou Travel Plan Revision, Determine the Motorized Road and Trail System, Implementation, Caribou-Targhee National Forest, Westside, Soda Spring and Montpelier Ranger Districts, Bannock, Bear River, Bonneville, Caribou, Franklin, Oneida and Power Counties, ID.

Summary: EPA has concerns with adverse impacts to water quality, air quality and wilderness.

Rating EC2

Final EISs

EIS No. 20050185, ERP No. F–NRC–F03009–MI, Generic—Donald C. Cook Nuclear Plant, Units No. 1 and 2, (TAC No. MC1221 and MC1222) License Renewal, Supplement 20 to NUREG 1437, Berrien County, MI.

Summary: EPA continues to express environmental concerns related to radiological impacts/risk estimates and reducing the entrainment of fish and shellfish in early life stages. EPA recommends that additional information on these issues be included in the Record of Decision.

EIS No. 20050219, ERP No. F–BLM–K65275–00, California Coastal National Monument Resource Management Plan, To Protect Important Biological and Geological Values: Islands, Rocks, Exposed Reefs, and Pinnacles above Mean High Tide, CA, OR, and Mexico.

Summary: EPA has no objections to the proposed plan.

Dated: July 5, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–13468 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6665–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/* Weekly receipt of Environmental Impact Statements Filed 06/27/2005 Through 07/01/2005 Pursuant to 40 CFR 1506.9.

EIS No. 20050274, Draft EIS, AFS, ND, NE McKenzie Allotment Management Plan Revisions, Proposes to Continue Livestock Grazing on 28 Allotments, Dakota Prairie Grasslands Land and Resource Management Plan, Dakota Prairie Grasslands, McKenzie Ranger District, McKenzie County, ND, Comment Period Ends: 08/22/2005, Contact: Libby Knotts 701–842–3008.

EIS No. 20050275, Final EIS, FHW, WI, Wl–26 State Trunk Highway (STH) Improvements, Janesville at IH–90 to STH–60–East north of Watertown Road, Funding, (Project ID 1390–04–00), Rock, Jefferson and Dodge Counties, WI, Wait Period Ends: 08/08/2005, Contact: Johnny Gerbitz 608–829–7511.

EIS No. 20050276, Final EIS, FRC, 00, Entrega Pipeline Project, Construction and Operation New Interstate Natural Gas Pipeline System, Right-of-Way Grant Issue by BLM, Meeker Hub and Cheyenne Hub, Rio Blanco and Weld Counties, CO, and Sweetwater County, WY, Wait Period Ends: 08/08/2005, Contact: Thomas Russo 1–866–208–3372.

EIS No. 20050277, Final EIS, FHW, MO, U.S. Route 67 Corridor Project, Improvements from South of Fredericktown to the South of Neelyville, Madison, Wayne and Butler Counties, MO, Wait Period Ends: 08/08/2005, Contact: Peggy Casey 573–636–7104.

EIS No. 20050278, Draft 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, Comment Period Ends: 08/22/2005, Contact: Monte Fujishin 509–843–1891. This document is available on the Internet at: *http://www.fs.fed.us/r6/uma/projects/readroom/pomeroy/up-charley_dseis.pdf.*

EIS No. 20050279, Final EIS, NPS, AL, Selma to Montgomery National Historic Trail Comprehensive Management Plan, Implementation, Dallas, Lowndes and Montgomery Counties, AL, Wait Period Ends: , 08/08/2005 Contact: John Barrett 404–562–3124 Ext 637.

EIS No. 20050280, Final EIS, COE, FL, Herbert Hoover Dike Major Rehabilitation Evaluation Study, Proposed to Reduce the Probability of a Breach of Reach One, Lake Okeechobee, Martin and Palm Beach Counties, FL, Wait Period Ends: 08/08/2005, Contact: Rebecca Weis 904–232–1577.

EIS No. 20050281, Draft EIS, AFS, CA, North Fork Eel Grazing Allotment Management Project, Proposing to Authorize Cattle Grazing on Four Allotment, Six Rivers National Forest, Mad River Ranger District, North Fork Eel River and Upper Mad River, Trinity County, CA, Comment Period Ends: 08/22/2005, Contact: Julie Ranieri 707–441–3673.

EIS No. 20050282, Final EIS, FHW, OH, US 33 Nelsonville Bypass Project, To Upgrade Existing Four-Lane

Controlled-Access Expressway between Haydenville in Hocking County and New Floodwood in Hocking and Athens Counties, OH, Wait Period Ends: 08/08/2005, Contact: Dave Snyder 614–280–6852.

Dated: July 5, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–13469 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7926–5]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action announces the availability of EPA decisions identifying water quality limited segments and associated pollutants in New Hampshire to be listed pursuant to Clean Water Act section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

EPA has partially approved and partially disapproved New Hampshire's 2004 submittal. Specifically, EPA approved New Hampshire's listing of 637 waterbody segments (5189 including mercury impairments), associated pollutants and priority rankings. EPA disapproved New Hampshire's decision not to list five water quality limited segments and associated pollutants. EPA identified these additional waterbody segments, pollutants, and priority rankings for inclusion on the 2004 section 303(d) list.

EPA is providing the public the opportunity to review its decision to add waters and pollutants to New Hampshire's 2004 Section 303(d) list, as required by EPA's Public Participation regulations. EPA will consider public comments in reaching its final decision on the additional water bodies and pollutants identified for inclusion on New Hampshire's final list.

DATES: Comments must be submitted to EPA on or before August 8, 2005.

ADDRESSES: Comments on the proposed decisions should be sent to Al Basile, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023, telephone (617) 918–1599, e-mail *basile.alfred@epa.gov*. Oral comments will not be considered. Copies of the proposed decisions concerning New Hampshire which explain the rationale for EPA's decision can be obtained from the EPA Web site at *http://www.epa.gov/region1/eco/tmdl/index.html* or by writing or calling Mr. Basile at the above address. Underlying documentation comprising the record for these decisions are available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Al Basile at (617) 918–1599 or *basile.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, New Hampshire submitted to EPA its listing decisions under section 303(d)(2) on April 1, 2004. EPA approved New Hampshire's listing of 637 waterbody segments (5189 including mercury impairments) and associated priority rankings. EPA disapproved New Hampshire's decision not to list five water quality limited segments and associated pollutants. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2004 section 303(d) list. EPA solicits public comment on its identification of five additional waters and associated pollutants for inclusion on New Hampshire's 2004 Section 303(d) list.

Dated: June 14, 2005.

Linda M. Murphy,

Director, Office of Ecosystem Protection, New England Regional Office.

[FR Doc. 05–13496 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7934–6]

New Hampshire Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of New Hampshire requesting a determination of the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of New Hampshire. The area covered under this petition is:

Waterbody/general area	Latitude	Longitude
Open Ocean—southern	42°51′26.81241″	-70°44′50.43790″
Open Ocean—south of Isles of Shoals	42°54′54.69793″	-70°37′48.0360″
Open Ocean—east of Isles of Shoals	42°57′24.92153″	-70°32′6.08357″
Open Ocean—northern	43°0′40.06352″	-70°39′39.85119″
Open Ocean—center	42°57′13.00278″	-70°41′42.94551″
Hampton Falls River	42°54′39.99647″	-70°51′49.17592″
Great Bay—Squamscott River	42°58′55.12418″	-70°56′45.02511″
Great Bay—Lamprey River	43°4′53.81971″	-70°56′4.65330″
Little Bay—Oyster River	43°7′51.91065″	-70°55′4.70649″
Cocheco River	43°11′42.30454″	-70°52′21.96791″

Waterbody/general area	Latitude	Longitude
Salmon Falls River	43°13′36.97946″	-70°48′40.68515″

The State of New Hampshire has certified that there are six pumpout facilities located on the New Hampshire coastline to service vessels within the proposed NDA. A list of the facilities, phone numbers, locations, and hours of operation is appended at the end of this petition. There are five shore-based facilities, four of these facilities discharge directly to the town sewer, and one facility discharges into a 3,000 gallon tight tank. The area is also serviced by a pumpout boat which discharges into the town sewer. In addition, there are six restroom facilities available at marinas and boat launches, and another five restroom facilities available to the boating public, that are not associated with marinas.

The State of New Hampshire used three different methods to estimate the total vessel population in the proposed NDA, and used the highest total estimate of 4,593 in their calculations to determine the number of pumpout facilities needed to adequately serve the boating public. The transient vessel population is estimated to be 1,689 at any point in time during the boating season, which is included in the total figure. Of the estimated total of 4,593 vessels using this area at any given time, approximately 962 are of a size that may have sewage holding tanks and need pumpout services. The State has determined that the six pumpout facilities currently in service in the proposed NDA are sufficient to meet the potential demand and prevent the discharge of vessel sewage into coastal waters.

The coastline and coastal waters within the proposed NDA contain a variety of rich natural habitats and support a wide diversity of species, providing a range of recreational and commercial activities. There are 16 public beaches, 12 public boat ramps, three historic sites, four science and nature centers, and the Great Bay National Wildlife Refuge. Great Bay, along with New Hampshire's other, smaller estuaries, is part of the National Estuary Program, having been designated an "estuary of national significance" by EPA. The New Hampshire coastal area is also part of the larger ecosystem of the Gulf of Maine, which is the subject of an international ecosystem management program involving the United States and Canada. Both recreational and commercial shell fishermen use the area for the harvest of soft shell clams, oysters, blue mussels, surf clams, razor clams, and mahogany quahogs. In addition, recreational fishing is popular and the species found in the area are smelt, small cod, flounder, haddock, pollock, and striped bass.

Comments and reviews regarding this request for action may be filed on or before August 22, 2005. Such communications, or requests for information or a copy of the applicant's petition, should be addressed to Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–1538.

Dated: June 28, 2005.

Robert W. Varney,

Regional Administrator.

LOCATIONS OF MARINAS WITH PUMPOUT STATIONS

Marina name	Town	Waterbody	Phone number & VHF#	Contact	Operating hours
George's Marina	Dover	Cocheco River	(603) 742–9089	George Maglaras.	8:30 a.m.–5:00 p.m. (weekdays); 8:30 a.m.–6:00 p.m. (Saturday); 9:00 a.m.–4:00 p.m. (Sunday)
Little Bay Boating Club.	Dover	Little Bay	(603) 749–9282; VHF: 9, 16	Ed Rosholt	Call marina.
Great Bay Marine.	Newington	Little Bay	(603) 436–5299; VHF: 9, 68	Ellen Saas/ Tom Brown.	24 hours (May through October).
Wentworth by the Sea Marina.	New Castle	Little Harbor	(603) 433–5050; VHF: 9, 68, 71	Pat Kelley	8:00 a.m.–8:00 p.m. (weekdays); 7:00 a.m.–8:00 p.m. (weekends)
Hampton River Marina.	Hampton	Hampton Harbor.	(603) 929–1422; VHF: 10, 16	Len Russell	Call marina.
DES Mobile Pumpout Boat.	Portsmouth	All coastal	(603) 436–0915; VHF: 9	Steve Root/ Ken Anderson.	Call for an appointment.

[FR Doc. 05–13342 Filed 7–7–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7935–7]

Clean Water Act Section 303(d): Final Agency Action on Four Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on four TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Barataria river basin, under section 303(d) of the Clean Water Act (CWA). Documents from the administrative record file for the four TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/region6/water/tmdl.htm*. The administrative record file may be examined by calling or writing Ms. Diane Smith at the following address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal

Court against the EPA, styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

EPA Takes Final Agency Action on Four TMDLs

By this notice EPA is taking final agency action on the following four TMDLs for waters located within the Barataria river basin:

Subsegment	Waterbody name	Pollutant
020201	Bayou Des Allemands—Lac Des Allemands to Hwy. U.S. 90 (scenic).	Dissolved Oxygen.
020201	Bayou Des Allemands—Lac Des Allemands to Hwy. U.S. 90 (scenic).	Nutrients.
020303	Lake Cataouatche and Tributaries	Dissolved Oxygen.
020303	Lake Cataouatche and Tributaries	Nutrients.

EPA requested the public to provide EPA with any significant data or information that might impact the four TMDLs in the **Federal Register** Notice: 69 FR 69924 (December 1, 2004). The comments received and the EPA's response to comments may be found at *http://www.epa.gov/region6/water/tmdl.htm.*

Dated: June 28, 2005.

William K. Honker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–13489 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7935–6]

Clean Water Act Section 303(d): Final Agency Action on Six Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on six TMDLs prepared by EPA Region 6 for waters listed in the Atchafalaya River, Barataria River, Lake Pontchartrain, Mississippi River, Sabine River, and Terrebonne Basins of Louisiana, under section 303(d) of the Clean Water Act (CWA). Documents from the administrative record file for the six TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/region6/water/tmdl.htm.* The administrative record file may be examined by calling or writing Ms. Diane Smith at the following address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against EPA, styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner.

EPA Takes Final Agency Action on Six TMDLs

By this notice EPA is taking final agency action on the following six TMDLs for waters located within Louisiana basins:

Subsegment	Waterbody name	Pollutant
010901	Atchafalaya Bay and Delta and Gulf Waters to the State 3-mile Limit	Mercury.
021102	Barataria Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
042209	Lake Pontchartrain Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
070601	Mississippi River Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
110701	Sabine River Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
120806	Terrebonne Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.

EPA requested the public to provide EPA with any significant data or information that might impact the six TMDLs in the **Federal Register** Notice 70 FR 19760 (April 14, 2005). The comments received and EPA's response to comments may be found at *http://www.epa.gov/region6/water/tmdl.htm.*

Dated: June 28, 2005.

William K. Honker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–13490 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7935–8]

Clean Water Act Section 303(d): Notice Final Agency Action Withdrawing Nine Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Withdrawal of nine TMDLs.

Subject: This notice announces EPA final action withdrawing nine TMDLs in the water column that EPA established pursuant to the Clean Water Act ("CWA") section 303(d) in Louisiana. EPA is withdrawing these nine TMDLs because on September 22, 2003, Louisiana promulgated revisions to the Louisiana water quality standards regulations (LAC 33:IX, 1123.C.1).

Background: Louisiana revised its water quality standards for chloride, sulfate and TDS for subsegments 060204, 060211, and 060301; and for sulfate and TDS for subsegments 060801 and 060802 located in the Vermillion-

Teche River Basin that receive water diverted from the Atchafalaya River.

The Louisiana Department of Environmental Quality (LDEQ) General Counsel certified these water quality standards revisions and submitted them to EPA on September 22, 2003. EPA received the revisions and certification on September 23, 2003, pursuant to 40 CFR 131.5, and EPA approved these revisions to the water quality standards (WQS) on December 22, 2003.

The numeric criteria for chloride for subsegments 060204, 060211, and 060301 was revised from 40 mg/L to 65 mg/L; the numeric criteria for sulfate for subsegments 060204, 060211, 060301, 060801 and 060802 was revised from 30 mg/L to 70 mg/L; and, the numeric criteria for TDS for subsegments 060204, 060211, 060301, 060801 and 060802 was revised from 220 mg/L to 440 mg/L. Following the revisions to the water quality standards LDEQ re-assessed the ambient water quality data from the affected water bodies to determine whether the water quality standards were met, using data from January 1, 1998 through August 20, 2004. Based on the re-assessment, the revised water quality standards for sulfate, chloride, and TDS for subsegments 060204, 060211, 060301, 060801, and 060802 are met. Thus, EPA is withdrawing these nine TMDLs.

EPA Withdraws Previously Approved TMDLs for Nine Waterbody/Pollutant Combinations That Are Not Needed Due to Assessment of New Data That Show They Are Meeting New WQS:

Subsegment	Waterbody name	Pollutant
060204	Bayou Courtableau—origin to West Atchafalaya Borrow Pit Canal.	Sulfate and TDS/Salinity.
060211	West Atchafalaya Borrow Pit Canal—from Bayou Courtableau to Henderson, LA, includes Bayou Portage.	Sulfate and TDS/Salinity.
060301	Bayou Teche—headwaters at Bayou Courtableau to Keystone Locks and Dam.	Sulfate, TDS/Salinity, and, Chloride.
060801	Vermilion River—headwaters at Bayou Fusilier-Bourbeaux junction to New Flanders (Ambassador Caffery) Bridge, Hwy. 3073.	Sulfate.
060802	Vermilion River—from New Flanders (Ambassador Caffery) Bridge, Hwy. 3073 to Intracoastal Waterway.	Sulfate.

EPA established these nine TMDLs under CWA section 303(d) to satisfy a consent decree obligation in the lawsuit styled *Sierra Club* v. *Clifford*, Civ. No. 96–0527 (E.D. La.). Because the affected water bodies are meeting the revised water quality standards, they are no longer impaired under CWA section 303(d). LDEQ has no present obligation under the CWA to submit TMDLs to EPA for these pollutants on these subsegments, nor does the CWA require EPA to maintain these nine TMDLs. Other TMDLs either developed by EPA or LDEQ are not affected by this determination.

FOR FURTHER INFORMATION CONTACT: Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–2145.

Dated: June 28, 2005.

William K. Honker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–13491 Filed 7–7–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010071–031.

Title: Cruise Lines International Association Agreement.

Parties: American Cruise Lines, Inc.; American Hawaii Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; First European Cruises; Holland America Line; Mediterranean Shipping Cruises; Norwegian Coastal Voyage, Inc./Bergen Line Services; Norwegian Cruise Line; Orient Lines; Princess Cruises; Radisson Seven Seas Cruises; Regal Cruises; Royal Caribbean International; Royal Olympic Cruises; Seabourn Cruise Line; Silversea Cruises, Ltd.; and Windstar Cruises.

Filing Party: J. Michael Cavanaugh, Esq.; Holland & Knight, LLP; 2099 Pennsylvania Avenue, NW.; Suite 100; Washington, DC 20006.

Synopsis: The amendment would revise the amount of annual travel agency fees for affiliate travel agencies and specify that affiliate travel agencies may not offer agency affiliation to a potential travel agency affiliate or employee exclusively to obtain personal discounts and benefits or make inaccurate or false claims about the benefits of using CLIA's trademarks, name, logo, or identification card.

Agreement No.: 011917.

Title: PONL/MOL Space Charter Agreement.

Parties: P&O Nedlloyd Limited, P&O Nedlloyd B.V., and Mitsui O.S.K. Lines, Ltd.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW.; Washington, DC 20036.

Synopsis: Under the agreement, Mitsui will charter space from P&O Nedlloyd in the trade between U.S. East Coast ports and ports on the East Coast of South America, including ports in Venezuela and Colombia.

Agreement No.: 201113–005.

Title: Oakland/SSA LLC Preferential Assignment Agreement.

Parties: Port of Oakland and SSA Terminals, LLC.

Filing Party: Thomas D. Clark, Esq.; Assistant Port Attorney; Port of Oakland; 530 Water Street; Oakland, CA 94607.

Synopsis: The amendment deletes certain assigned premises from the underlying agreement.

By Order of the Federal Maritime Commission.

Dated: July 1, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–13406 Filed 7–7–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10164, CMS–855, CMS–R–257, and CMS–10064]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) 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 functions; (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:* New collection; *Title of Information Collection:* Electronic Data Interchange (EDI) Enrollment Form and Medicare EDI Registration Form; *Form No.:* CMS–10164 (OMB # 0938–NEW); *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 Electronic Data Interchange (EDI) transactions provide certain assurances as a condition of receiving access to the Medicare system for the purpose of conducting EDI exchanges. Health care providers, clearinghouses, and health plans that wish to access the Medicare system are required to complete this form. The information will be used to assure that those entities that access the Medicare system are aware of applicable provisions and penalties; *Frequency:* Recordkeeping and reporting—other (one-time only); *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 1,220,000; *Total Annual Responses:* 1,220,000; *Total Annual Hours:* 400,000.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Carrier Provider/Supplier Enrollment Application; *Form No.:* CMS–855 (OMB # 0938–0685); *Use:* This application is currently required of all health care providers/suppliers who wish to enroll in the Medicare program. It is submitted at the time the applicant first requests a Medicare billing number. The application is used by Medicare contractors to collect data to assure the applicant has the necessary professional and/or business credentials to provide the health care services for which they intend to bill Medicare, including information that allows the Medicare contractor to correctly price, process and pay the applicant's claims. It also gathers information that allows Medicare contractors to ensure that the provider/supplier is not sanctioned from the Medicare program, or debarred, suspended or excluded from any other Federal agency or program; *Frequency:* Reporting—other (upon initial enrollment and revalidation); *Affected Public:* Business or other for-profit, individuals or households, not-for-profit institutions; *Number of Respondents:* 604,000; *Total Annual Responses:* 604,000; *Total Annual Hours:* 1,227,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Advantage Disenrollment Form to original Medicare; *Form No.:* CMS–R–257 (OMB # 0938–0741); *Use:* Section 4001 of the Balanced Budget Act of 1997 amended the Social Security Act to add section 1851, including 1851(c)(1) which required the establishment of a procedure and form to make and change Medicare Advantage elections, which include disenrollment. The disenrollment form provides beneficiaries an option to submit a disenrollment to a neutral third party, process the disenrollment action as a change of election and to elicit the reasons for disenrollment in order to discern and report disenrollment rates; *Frequency:* On occasion and other (one-time only); *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions, and Federal government; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 3,300.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Minimum Data Set (MDS) for Swing Bed Hospitals and Supporting Regulations in 42 CFR 483.20 and 413.337; *Form No.:* CMS–10064 (OMB # 0938–0872); *Use:* As required under section 1888 (e)(7) of the Omnibus Reconciliation Act of 1987, swing bed hospitals must be reimbursed under the skilled nursing facility prospective payment system. CMS uses the MDS data to reimburse swing bed hospitals for SNF-level care furnished to Medicare beneficiaries. The MDS3.0 is currently being developed with plans for field testing to begin in 2006 with the expectation of completion in 2007. At that time, CMS will analyze the data derived from the study, including the implementation of the new version of the MDS for swing bed hospitals. Since we do not have the MDS3.0 version available, we are requesting an extension for the current SB–MDS.; *Frequency:* Reporting—other (days 5, 14, 30, 60, and 90 of stay); *Affected Public:* Not-for-profit institutions, and State, local, and tribal governments; *Number of Respondents:* 820; *Total Annual Responses:* 92,789; *Total Annual Hours:* 51,314.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice to the address below: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: William N. Parham, III, PRA Analyst, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 30, 2005.

Michelle Shortt,

Acting Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–13413 Filed 7–7–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10163]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (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.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because the normal procedures are likely to cause a statutory deadline to be missed.

Section 923 (d) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 officially established 1–800–MEDICARE as the primary source of general Medicare information and assistance. As part of the MMA, CMS must provide Part D eligibles (and their representatives) with the information they need to make informed decisions among the available choices for Part D coverage. As Part D sponsors can start marketing their programs on October 1, 2005 and since the initial enrollment period for the general population is from November 15–May 15, 2006, CMS needs to insure that the 1–800–MEDICARE is meeting the needs of its callers. Therefore, CMS needs to have the Customer Experience Questionnaire in the field by September to provide quick, continuous feedback on the 1–800–MEDICARE experience.

CMS is requesting OMB review and approval of this collection by August 15, 2005, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by August 8, 2005.

Type of Information Collection Request: New collection; *Title of Information Collection:* 1–800–MEDICARE Customer Experience Questionnaire; *Use:* The information collected through this survey of callers to 1–800–MEDICARE is to help insure that this critical information channel will be meeting the needs of its customers during the key fall 2005 Part D enrollment period; *Form Number:* CMS–10163 (OMB#: 0938–NEW); *Frequency:* One-time; Affected Public: Individuals or households; *Number of Respondents:* 31,200; *Total Annual Responses:* 31,200; *Total Annual Hours:* 4,940.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by August 8, 2005: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: Melissa Musotto, CMS–10163; and, OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 1, 2005.

Michelle Shortt,

Acting Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–13414 Filed 7–7–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1288–N]

Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups—August 17, 18, and 19, 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the second biannual meeting of the APC Panel for 2005.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare and Medicaid Services (CMS) concerning the clinical integrity of the APC groups and their associated weights. The advice provided by the Panel will be considered as CMS prepares its annual updates of the hospital Outpatient Prospective Payment System (OPPS) through rulemaking.

DATES: *Meeting Dates:* The second biannual meeting for 2005 is scheduled for the following dates and times:

- Wednesday, August 17, 2005, 1 p.m. to 5 p.m. (e.d.t.)
- Thursday, August 18, 2005, 8 a.m. to 5 p.m. (e.d.t.)
- Friday, August 19, 2005, 8 a.m. to 12 noon (e.d.t.)

Deadlines:

Deadline for Hardcopy Comments/Suggested Agenda Topics—

- 5 p.m. (e.d.t.), Monday, August 1, 2005.

Deadline for Hardcopy Presentations—

- 5 p.m. (e.d.t.), Monday, August 1, 2005.

Deadline for Attendance Registration—

- 5 p.m. (e.d.t.), Monday, August 8, 2005.

Deadline for Special Accommodations—

- 5 p.m. (e.d.t.), Monday, August 8, 2005.

Submittal of Materials to the Designated Federal Officer (DFO): Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, nor can we print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations will be accepted for placement in the meeting booklets. All hardcopy presentations *must be accompanied by Form CMS–20017*. The form is now available through the CMS Forms Web site. The URL for linking to this form is (*http://www.cms.hhs.gov/forms/cms20017.pdf.*)

We are also requiring electronic versions of the written comments and presentations (in addition to the hardcopies), to forward to the Panel members for their review prior to the meeting.

Consequently, you must send BOTH electronic and hardcopy versions of your presentations and written comments by the prescribed deadlines. (Electronic transmission must be sent to the e-mail address below, and hardcopies—accompanied by Form CMS–20017—must be mailed to the Designated Federal Officer [DFO], as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.)

ADDRESSES: The meeting will be held in the Multipurpose Room, 1st Floor, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the meeting; meeting registration; and hardcopy submissions of oral presentations, agenda items, and comments, please contact the DFO: Shirl Ackerman-Ross, DFO, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850. Phone (410) 786–4474.

- E-mail address for comments, presentations, and registration requests is *APCPanel@cms.hhs.gov*.
- News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The CMS Advisory Committees' Information Line is 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites:

- For additional information on the APC meeting agenda topics and updates to the Panel's activities, search our Web site at: *http://www.cms.hhs.gov/faca/apc/default.asp*.
- To obtain Charter copies, search our Web site at *http://www.cms.hhs.gov/faca* or e-mail the Panel DFO.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (HHS) (the Secretary) is required by section 1833(t)(9)(A) of the Act, as amended and redesignated by sections 201(h) and 202(a)(2) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), respectively, to establish and consult with an expert, outside advisory panel on APC groups. The APC Panel meets up to three times annually to review the APC groups and to provide technical advice to the Secretary and the Administrator of the Centers for Medicare and Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the groups and their associated weights. All members must have technical expertise that will enable them to participate fully in the work of the Panel. The expertise encompasses hospital payment systems, hospital medical-care delivery systems, outpatient payment requirements, APCs, Physicians' Current Procedural Terminology Codes (CPTs), the use and payment of drugs and medical devices in the outpatient setting, and other forms of relevant expertise. It is not necessary that any one member be an expert in all areas.

We will consider the technical advice provided by the Panel as we prepare the final rule that updates the OPPS payment rates for the next calendar year. The Secretary recently re-chartered the Panel on November 8, 2004.

The Panel may consist of a Chair and up to 15 representatives who are full-time employees (not consultants) of Medicare providers, which are subject to the OPPS.

The Administrator selected the Panel membership based upon either self-nominations or nominations submitted by providers or interested organizations. The Panel presently consists of the following members and a Chair:

- Edith Hambrick, M.D., J.D., Chair.
- Marilyn Bedell, M.S., R.N., O.C.N.
- Albert Brooks Einstein, Jr., M.D.
- Sandra J. Metzler, M.B.A., R.H.I.A., C.P.H.Q.
- Frank G. Opelka, M.D., F.A.C.S.
- Louis Potters, M.D., F.A.C.R.
- Lou Ann Schraffenberger, M.B.A., R.H.I.A., C.C.S.–P.
- Judie S. Snipes, R.N., M.B.A., F.A.C.H.E.
- Lynn R. Tomascik, R.N., M.S.N., C.N.A.A.
- Timothy Gene Tyler, Pharm.D.

II. Agenda

The agenda for the August 2005 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Reconfiguration of APCs (for example, splitting of APCs, moving Healthcare Common Procedure Coding System (HCPCS) codes from one APC to another and moving HCPCS codes from new technology APCs to clinical APCs).
- Evaluation of APC weights.
- Packaging devices and drug costs into APCs: methodology, effect on APCs, and need for reconfiguring APCs based upon device and drug packaging.
- Removal of procedures from the inpatient list for payment under the OPPS.
- Use of single and multiple procedure claims data.
- Packaging of HCPCS codes.
- Other technical issues concerning APC structure.

III. Written Comments and Suggested Agenda Topics

Hardcopy written comments and suggested agenda topics must be sent to the DFO. Such items must be received by the DFO 5 p.m. (e.d.t.), Monday, August 8, 2005.

Additionally, the written comments and suggested agenda topics must fall within the subject categories outlined in the Panel's Charter listed in the Agenda section of this notice.

IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must contact the DFO. The DFO must receive hardcopy presentations by 5 p.m. (e.d.t.), on Monday, August 8, 2005, in order to be scheduled.

The number of oral presentations may be limited by the time available. Oral presentations must not exceed 5 minutes in length.

The Chair may further limit time allowed for presentations due to the number of oral presentations, if necessary.

V. Presenter and Presentation Criteria

The additional criteria below must be supplied to the DFO by the August 8, 2005, deadline (along with hardcopies of presentations).

- Required personal information regarding presenter(s):
  - Name of presenter(s):
  - Title(s);
  - Organizational affiliation;
  - Address;
  - E-mail address; and
  - Telephone number(s).
- All presentations must contain, at a minimum, the following supporting information and data:
  - Financial relationship(s) of presenter(s), if any, with any company whose products, services, or procedures that are under consideration:
    - Physicians' Current Procedural Terminology (CPT) codes involved;
    - APC(s) affected;
    - Description of the issue(s);
    - Clinical description of the service under discussion (with comparison

to other services within the APC);
- Recommendations and rationale for change;
- Expected outcome of change; and
- Potential consequences of not making the change(s).

VI. Oral Comments

In addition to formal oral presentations, there will be opportunity during the meeting for public oral comments that will be limited to 1 minute for each individual and a total of 5 minutes per organization.

VII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must call or e-mail the Panel DFO to register in advance no later than 5 p.m. (e.d.t.), Wednesday, August 10, 2005.

The following information must be e-mailed or telephoned to the DFO by the date and time above:
- Name(s) of attendee(s);
- Title(s);
- Organization;
- E-mail address(es); and
- Telephone number(s).

VIII. Security, Building, and Parking Guidelines

Persons attending the meeting must present photographic identification to the Federal Protective Service or Guard Service personnel before they will be allowed to enter the building.

Security measures will include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, including personal items such as desktops, cell phones, palm pilots, are subject to physical inspection.

Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30–45 minutes prior to the convening of the meeting each day. (Please note that the meeting on Wednesday, August 17, 2005, does not convene until 1 p.m.)

All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.

Parking permits and instructions are issued upon arrival by the guards at the main entrance.

IX. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.d.t.), Wednesday, August 10, 2005.

Authority: Section 1833(t) of the Act (42 U.S.C. 1395l(t)). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 21, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–13562 Filed 7–7–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Members Representing Industry Interests on Public Advisory Panels or Committees; Medical Devices Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting industry representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health.

DATES: Industry organizations interested in participating in the selection of a nonvoting member to represent industry for the vacancies listed in this document must send a letter to FDA by August 8, 2005, stating their interest in one or more panels. Concurrently, nomination materials for prospective candidates should be sent to FDA by August 8, 2005. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative.

ADDRESSES: All letters of interest and nominations should be sent to Kathleen L. Walker (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0450, ext. 114, e-mail: *klw@cdrh.fda.gov.*

SUPPLEMENTARY INFORMATION: Section 520(f)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include one nonvoting member to represent the interests of the medical device manufacturing industry.

FDA is requesting nominations for nonvoting members representing industry interests for the vacancies listed in table 1 of this document.

TABLE 1.—MEDICAL DEVICE PANEL VACANCIES

Medical Devices Panels	Approximate Date Representative is Needed
Anesthesiology and Respiratory Therapy Devices Panel	December 1, 2005
Dental Products Panel	November 1, 2005
General Hospital and Personal Use Devices Panel	January 1, 2006
Immunology Devices Panel	Immediate
Ophthalmic Devices Panel	November 1, 2005

I. Functions

The medical device panels perform the following functions: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation, (2) advise the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of these devices into one of three regulatory categories, (3) advise on any possible risks to health associated with the use of devices, (4) advise on formulation of product development protocols, (5) review premarket approval applications for medical devices, (6) review guidelines and guidance documents, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices, and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Selection Procedure

Any organization in the medical device manufacturing industry wishing to participate in the selection of a nonvoting member to represent industry on a particular panel should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that nominations be made by someone within an organization, trade association, or firm who is willing to participate in the selection process. Within the subsequent 30 days, FDA will send a letter to each organization and a list of all nominees along with their resumes. The letter will state that the interested organizations are responsible for conferring with one another to select a candidate, within 60 days after receiving the letter, to serve as the nonvoting industry representative on a particular device panel. If no individual is selected within that 60 days, the Commissioner may select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may nominate themselves or an organization representing the medical device industry may nominate one or more individuals to serve as a nonvoting industry representative. A current curriculum vitae (which includes the nominee's business address, telephone number, and e-mail address) and the name of the panel of interest should be sent to the FDA contact person (see **FOR FURTHER INFORMATION CONTACT**). FDA will forward all nominations to the organizations that have expressed interest in participating in the selection process for that panel.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on its advisory committees. Therefore, the agency encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 23, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–13421 Filed 7–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: The agency must receive nominations on or before August 8, 2005.

ADDRESSES: All nominations are to be submitted to the Acting Director, Division of Vaccine Injury Compensation, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl A. Lee, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, HSB, HRSA, at (301) 443–2124 or e-mail: *clee@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Pub. L. 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommending to the Director of the National Vaccine Program that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: Three health professionals, who are not employees of the United States Government and have expertise in the health care of children; and the epidemiology, etiology, and prevention of childhood diseases; and the adverse reactions associated with vaccines, at least two shall be pediatricians; three members from the general public, at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A health professional, who has expertise in the health care of children; and the epidemiology, etiology, and prevention of childhood diseases; (2) an attorney with no specific affiliation; and (3) a legal representative (parent or guardian) of a child who has suffered a vaccine-related injury or death. Nominees will be invited to serve a 3-year term beginning January 1, 2006, and ending December 31, 2008.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

Dated: June 30, 2005.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–13422 Filed 7–7–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 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 Human Genome Research Institute Special Emphasis Panel.

Date: July 14, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892. 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13448 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Requirements of BMP–SMAD1/5 Pathway in ES Cell Self-Renewal.

Date: July 25, 2005.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13447 Filed 7–7–05; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict Meeting.

Date: July 20, 2005.

Time: 4 p.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401. (301) 435–1389. *ms80x@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, HIV and Drug Abuse Interventions Among Pregnant Women in Drug Abuse Treatment.

Date: July 26, 2005.

Time: 8:30 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 1177 15th St., NW., Washington, DC 20005.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401. (301) 435–1389. *ms80x@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13451 Filed 7–7–05; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis panel, NSPY Data Archive, Analysis, and Management Center.

Date: July 7, 2005.

Time: 10 a.m. to 12 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: Eric Zatman, 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) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13452 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of General Medical 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 persona information concerning individuals associated with the grant applications, the disclosure of which would constitutes a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of General Medical Sciences Special Emphasis Panel, Trauma and Burn.

Date: July 26, 2005.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluation grant applications.

Place: National Institutes of Health, 45 Center Drive, 3AN18, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesa, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Programs Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetic and Development Biology Research; 93.88, Minority Access to Research Center; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13454 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 of Child Health and Human Development Special Emphasis Panel, Consortium on Safe Labor.

Date: July 27, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13455 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Training Application.

Date: July 18, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone conference call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13458 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of 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 Insitute of Allergy and Infectious Diseases Special Emphasis Panel Framework Programs for Global Health.

Date: July 18–19, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Adriana Cosetero, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–2761, (301) 451–4573, *acostero@niaid.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 29, 2005.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13461 Filed 7–7–05; 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 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 of Environmental Health Sciences Special Emphasis Panel Research and Development of NTP Independent Verification and Validation (IV&V) System.

Date: July 28, 2005.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: East Campus 79 TW Alexander Drive Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(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: June 29, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13462 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Commission on Systemic Interoperability, July 12, 2005, 8 a.m. to July 12, 2005, 4 p.m., FDA at Irvine, 18701 Fairchild, Irvine, California 92612, which was published in the **Federal Register** on June 22, 2005, 70 FR 36195.

The meeting times have changed to 7 a.m. to 3 p.m. on July 12, 2005, and will be held at the same location. The meeting is open to the public.

Dated: June 29, 2005.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13459 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 11, 2005, 8:30 a.m. to July 12, 2005, 6 p.m., Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015 which was published in the **Federal Register** on June 22, 2005, 70 FR 36195–36197.

The meeting will be held at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13449 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 11, 2005, 8 a.m. to July 12, 2005, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on June 22, 2005, 70 FR 36195–36197.

The meeting title has been changed to "ZRG1 ONC–T (10) B: Cancer Drug Development and Therapeutics SBIR".

The meeting is closed to the public.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13450 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 27, 2005, 8:30 a.m. to June 28, 2005, 4 p.m., The River Inn, 924 25th Street, NW., Washington, DC 20037 which was published in the **Federal Register** on May 26, 2005, 70 FR 30475–30477.

The meeting will be held July 18, 2005 to July 19, 2005. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13453 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, July 7, 2005, 8 a.m. to July 7, 2005, 2 p.m., The River Inn, 924 25th Street, NW., Washington, DC 20037 which was published in the **Federal Register** on June 22, 2005, 70 FR 36197–36198.

The meeting is cancelled due to the reassignment of the applications.

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13456 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amendment Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 21, 2005, 2 p.m. to June 21, 2005, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 24, 2005, 70 FR 36648.

The meeting will be held on July 21, 2005. The meeting time and location remains the same. The meeting is closed to the public.

Dated: June 28, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13457 Filed 7–7–05; 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, ZRG1 ONC–T(03)M: Ultrasound Systems and Radiotherapy.

Date: July 6, 2005.

Time: 2 p.m. to 4 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: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1716, *petrakoe@mail.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, Bone Immunobiology.

Date: July 11, 2005.

Time: 12 p.m. to 1 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: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, 301–435–1787, *chenp@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, Colorectal Carcinoma Metastasis.

Date: July 13, 2005.

Time: 2 p.m. to 3 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: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–435–4467, *choe@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, ZRG1 ONC–T(04)M: Genes and Radiation Sensitivity.

Date: July 18, 2005.
Time: 2 p.m. to 3 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: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–1716, *petrakoe@mail.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, PAIN SBIR/STTR.
Date: July 20, 2005.
Time: 2:30 p.m. to 5 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: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Adult Psychopathology and Disorders of Aging.
Date: July 21, 2005.
Time: 2 p.m. to 3 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: Jane A. Doussard-Roosevelt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tissue Engineering Biomedical Research Partnerships.
Date: June 22, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive. Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrument Grant (SIG) Program: Surface Plasmon Resonance (SPR) Instruments.
Date: July 22, 2005.
Time: 8:30 a.m. to 2 p.m
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Myocyte Signaling Mechanisms.
Date: July 22, 2005.
Time: 2 p.m. to 3 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: Olga A. Tjurmina, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Conflicts in Biological Chemistry and Macromolecular Biophysics.
Date: July 25, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Delivery Systems and Nanotechnology.
Date: July 25, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Versailles III, Bethesda, MD 20814.
Contact Person: Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7849, Bethesda, MD 20892, (301) 435–2810, *zullost@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, HIBP Overflow.
Date: July 25, 2005.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB–G (03) Physical Activity Interventions and Health.
Date: July 25, 2005.
Time: 2 p.m. to 3 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: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Apoptosis in Sepsis Immune Response.
Date: July 25, 2005.
Time: 3:30 p.m. to 4:30 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: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nutrition and Vitamins.
Date: July 26, 2005.
Time: 11 a.m. to 1 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: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Applications—AIDS Therapeutics.
Date: July 26, 2005.
Time: 11 a.m. to 1 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: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Somatosensory.
Date: July 26, 2005.
Time: 11 a.m to 12:30 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: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HOP–J (04) BGES Member Applications B.

Date: July 26, 2005.

Time: 1:30 p.m. to 4 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: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Carcinogenesis and Chemoprevention.

Date: July 26, 2005.

Time: 2 p.m. to 4 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: Morris I. Kelsey, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, 301–435–1718, *kelseym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Thin Filament Regulation.

Date: July 26, 2005.

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: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–J (03) M Prenatal Cocaine Exposure.

Date: July 26, 2005.

Time: 3 p.m. to 4 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: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, IkB/NF-kB Recognition.

Date: July 27, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert Lees, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ECD—Member Conflicts.

Date: July 27, 2005.

Time: 10 a.m. to 3 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: Yvette M. Davis, MPH, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *davisy@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership Review.

Date: July 27, 2005.

Time: 11 a.m. to 12 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: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Toxins.

Date: July 27, 2005.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Moscone Convention Center, 747 Howard Street, 5th Floor, San Francisco, CA 94103.

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Community Influences on Health Behavior.

Date: July 27, 2005.

Time: 2 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: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Adult Psychopathology.

Date: July 27, 2005.

Time: 3:30 p.m. to 4:30 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: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.

Date: July 28–29, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Malgorzata Klosek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Interventions for Sleep Apnea, Cardiac Risk and Diabetes.

Date: July 28, 2005.

Time: 10:45 a.m. to 12:15 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: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759. Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Substance Abuse and Addictive Disorders.

Date: July 28, 2005.

Time: 11 a.m. to 12 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: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Fibrosis.

Date: July 28, 2005.

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: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Renal Transport and PKD Sciences.

Date: July 28, 2005.

Time: 12 p.m. to 2 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: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, (301) 435–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnership Review.

Date: July 29, 2005.

Time: 11 a.m. to 12 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: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@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: June 29, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13463 Filed 7–7–05; 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 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, SRA Conflict: Psychopathology and Developmental Disabilities.

Date: July 7, 2005.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@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, Member Conflict: Psychopathology and Developmental Disabilities.

Date: July 7, 2005.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@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, Fellowship Panel: Psychopathology and Developmental Disabilities, Stress and Aging.

Date: July 7–8, 2005.

Time: 11:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champoum@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, Member Conflict: Neuronal Mechanisms in Olfaction.

Date: July 13, 2005.

Time: 12 p.m. to 1 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: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@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, Math Skills Development.

Date: July 15, 2005.

Time: 3 p.m. to 4 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: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@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, Food Allergy and Sinusitis.

Date: July 25, 2005.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, (301) 435–1187, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

Date: July 25, 2005.

Time: 3 p.m. to 5 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: Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451–0131, *forryscs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Children's Nutrition and Exercise Activity.

Date: July 25, 2005.

Time: 3:30 p.m. to 4:30 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: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Sensory SBIRs.

Date: July 27, 2005.

Time: 1 p.m. to 3 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: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemoprevention of Lung Cancer.

Date: July 29, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@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: June 29, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–13464 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method for Diagnosis of Atherosclerosis

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 (HHS), is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: Provisional Patent Application Serial No. 60/607,031 filed 9/3/2004, and Provisional Patent Application Serial No. 60/618,275 filed 10/12/2004 titled "Method for Diagnosis of Atherosclerosis" referenced at HHS as E–276–2004/0–US–01 and E–276–2004/0–US–01 respectively to Biosite, Inc., having a place of business in the state of California. The field of use may be limited to an FDA approved clinical diagnostic product for atherosclerosis. The United States of America is the assignee of the patent rights in this invention. The territory may be worldwide. This announcement is the first notice to grant an exclusive license to this technology.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before September 6, 2005 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: Fatima Sayyid, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4521; Facsimile: (301) 402–0220; e-mail: *sayyidf@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The subject provisional patent applications are related to the field of vascular disease and markers expressed in peripheral blood or secreted into serum. Specifically, the claims are directed to a method of diagnosing atherosclerosis or determining the progression of atherosclerosis in a subject by assaying the expression of FOS, DUSP1, or both FOS and DUSP1 in monocytes from the subject wherein an increased expression of either or both markers indicates atherosclerosis or severity of atherosclerosis in a subject.

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: June 30, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–13460 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Heat Induced Gene Expression to Treat Cancer

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 part 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 U.S. Provisional Patent Application Serial No. 60/024,213, entitled "Spatially And Temporal Control Of Gene Expression Using A Heat Shock Protein Promoter In Combination With Local Heat" filed August 15, 1996 (E–235–1995/0–US–01), and all related foreign patents/patent applications, to New England OncoTherapeutics, Inc., having a place of business in Cambridge, Massachusetts. 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 gene-based therapeutics which incorporate focused ultrasound heating technologies to treat cancer.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before September 6, 2005 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: George G. Pipia, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5560; Facsimile: (301) 402–0220; E-mail: *pipiag@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The above-mentioned patent application describes methods of using heat to

control expression of specific genes in genetically engineered tissues and tumors. Therapeutic genes are put under control of a heat-responsive promoter, such as a promoter of a heat shock gene, and then introduced into cells. Expression of the therapeutic genes is induced by heating the cells with focused ultrasound or electromagnetic radiation. When guided by MRI, it is possible to heat small areas while visualizing and quantitating the level of heating. Thus, the technology could be used to target specific tissues or tumors for cancer therapy.

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 part 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 establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 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: June 28, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–13446 Filed 7–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–27]

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: July 8, 2005.

FUR 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 Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 30, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–13309 Filed 7–7–05; 8:45 am]

BILLING CODE 4210–24–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0054

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 872, Abandoned mine reclamation funds has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection package was previously approved and assigned clearance numbers 1029–0054. This notice describes the nature of the information collection activity and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. therefore, public comments should be submitted to OMB by August 8, 2005, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information for 30 CFR part 872, Abandoned mine reclamation funds. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR 872.10, which is 1029–0054. As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on February 15, 2005 (70 FR 7759). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Abandoned mine reclamation funds, 30 CFR part 872.

OMB Control Number: 1029–0054.

Summary: 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribes decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Total Non-Wage Costs: $0.

Send comments on the need for the collection of information for the

performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1029–0054 in all correspondence.

Dated: April 21, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–13420 Filed 7–7–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Draft Environmental Assessment and Draft Finding of No Significant Impact for Alternatives for Improved Flood Control of the Hidalgo Protective Levee System

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

ACTION: Notice of availability of draft Environmental Assessment (EA) and draft Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083), the USIBWC hereby gives notice that the Draft EA and Draft FONSI are available for Alternatives for Improved Flood Control of the Hidalgo Protective Levee System located in Hidalgo County, Texas.

The Hidalgo Protective Levee System was recently identified as a priority area for flood control improvement. The USIBWC is considering alternatives to raise the 4.5-mile levee system in two construction phases, each covering separate geographic reaches of the Hidalgo Protective Levee System. The phased construction approach responds to the likely availability of early funding for Phase 1, the upstream reach of the project. Alternatives under consideration to improve the Hidalgo Protective Levee System would expand the levee footprint by lateral extension of the structure. Levee footprint increases toward the riverside could potentially extend into floodplain areas designated by the U.S. Fish and Wildlife Service as part of the Lower Rio Grande Valley National Wildlife Refuge System. Footprint increases toward the levee landside could extend beyond the USIBWC right-of-way. Soil borrow easements would be used to secure levee material.

The EA explains the purpose and need for the Proposed Action, and assesses its potential environmental impacts. The EA also analyzes the No Action Alternative and two alternatives to the Proposed Action: the Phase 2 Footprint Expansion Alternative and the No-Footprint Expansion Alternative. The Proposed Action for Phase 1 of the project is to increase existing levee height with the associated increase in footprint (Phase 1 Footprint Expansion Alternative). This alternative would increase flood containment capacity by raising the height of the existing compacted earthen levee from 3 to 8 feet to meet a 3-foot freeboard requirement indicated by results of hydraulic modeling.

The Proposed Action for Phase 2 requires partial rerouting of the 1.2-mile downstream reach of the levee system (Partial Levee Rerouting Alternative). Levee rerouting would eliminate the need for construction of a floodwall in front of the Hidalgo Historic Pumphouse, a resource eligible for inclusion in the National Register of Historic Places, and a future site of the World Birding Center, a project by the City of Hidalgo and the Texas Parks and Wildlife Department. A new levee segment, approximately 0.7 mile in length, would be built along the south margin of the pumphouse intake channel, and the channel would be crossed to tie the new structure to the existing levee system. Floodwall placement would be required along the Hidalgo-Reynosa International Bridge.

On the basis of the Draft EA, the USIBWC has determined that an environmental impact statement is not required to implement the Proposed Action, and hereby provides notice of a Finding of No Significant Impact. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice of Availability.

The Draft EA and Draft FONSI have been sent to various federal, state, and local agencies and interested parties. The Draft EA and Draft FONSI are available under "What's New?" on the USIBWC home page at */http://www.ibwc.state.gov;* and at the USIBWC Mercedes Field Office at 325 Golf Course Road, Mercedes, TX 78570.

DATES: Written comments on the Draft EA and Draft FONSI will be accepted through August 8, 2005.

ADDRESSES: Written comments and inquiries on the Draft EA and Draft FONSI should be directed to Mr. Daniel Borunda, 4171 N. Mesa, Suite C–100, El Paso, Texas 79902. Phone: (915) 832–4701, Fax: (915) 832–4167, e-mail: *danielborunda@ibwc.state.gov.*

Dated: June 30, 2005.

Susan E. Daniel,

General Counsel.

[FR Doc. 05–13426 Filed 7–7–05; 8:45 am]

BILLING CODE 4710–03–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: annual parole survey, annual probation survey, and annual probation survey (short form).

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 83, page 22705 on May 2, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed

collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Parole Survey, Annual Probation Survey, and Annual Probation Survey (Short Form).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Numbers: CJ–7, CJ–8, and CJ–8A. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or tribal governments: State Departments of Corrections or State probation and Parole authority. City and county courts and probation offices for which a central reporting authority does not exist. Other: Federal Government: The Federal Bureau of Prisons.

Brief Abstract: For the CJ–7 form, 54 central reporters (two State jurisdictions in California and one each from the remaining States, the District of Columbia, the Federal Bureau of Prisons, and one local authority) responsible for keeping records on parolees will be asked to provide information for the following categories:

(a) As of January 1, 2005; and December 31, 2005, the number of adult parolees under their jurisdiction;

(b) The number of adults entering parole during 2005 through discretionary release from prison, mandatory release from prison, or reinstatement of parole;

(c) The number of adults released from parole during 2005 through successful completion, incarceration, absconder status, transfer to another parole jurisdiction, or death;

(d) Whether adult parolees supervised out of State have been included in the total number of parolees on December 31, 2005, and the number of adult parolees supervised out of State;

(e) As of December 31, 2005, the number of male and female parolees under their jurisdiction;

(f) As of December 31, 2005, the number of white (not of Hispanic origin), black or African American (not of Hispanic origin), Hispanic or Latino, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, two or more races, or additional categories in their information systems;

(g) As of December 31, 2005, the number of adult parolees under their jurisdiction with a sentence of more than one year, or a year or less;

(h) As of December 31, 2005, the number of adult parolees who had as their most serious offense a violent, property, drug, or other offense;

(i) As of December 31, 2005, the number of adult parolees under their jurisdiction who were active, inactive, absconders, or supervised out of state;

(j) As of December 31, 2005, the number of adult parolees under their jurisdiction who were supervised following a discretionary release, a mandatory release, a special conditional release, or other type of release from prison;

(k) Whether the parole authority operated an intensive supervision program, a program involving electronic monitoring, or had any parolees enrolled in a program that approximates a bootcamp, and the number of adult parolees in each of the programs as of December 31, 2005; and

(l) Of the adult parolees who died between January 1 and December 31, 2005, the number of deaths, by gender and by race.

For the CJ–8 form, 352 reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons; and 300 from local authorities) responsible for keeping records on probations will be asked to provide information for the following categories:

(a) As of January 1, 2005, and December 31, 2005, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation during 2005 with and without a sentence to incarceration;

(c) The number of adults discharged from probation during 2005 through successful completion, incarceration, absconder status, a detainer or warrant, transfer to another parole jurisdiction, and death;

(d) Whether adult probationers supervised out of State have been included in the total number of probationers on December 31, 2005, and the number of adult probationers supervised out of State;

(e) As of December 31, 2005, the number of male and female probationers under their jurisdiction;

(f) As of December 31, 2002, the number of white (not of Hispanic origin), black or African American (not of Hispanic origin), Hispanic or Latino, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, two or more races, or additional categories in their information system;

(g) As of December 31, 2005, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type;

(h) As of December 31, 2005, the number of adult probationers who had as their most serious offense a sexual assault, domestic violence offense, other assault, burglary, larceny or theft, fraud, drug law violation, driving while intoxicated or under the influence of alcohol or drugs, or other traffic offense.

(i) Whether the probation authority supervised any probationers held in local jails, prisons, community-based correctional facilities, or an ICE holding facility, and the number of adult probationers held in each on December 31, 2005;

(j) As of December 31, 2005, the number of adult probationers under their jurisdiction who had entered probation with a direct sentence to probation, a split sentence to probation, a suspended sentence to incarceration, or a suspended imposition of sentence;

(k) As of December 31, 2005, the number of adult probationers under their jurisdiction who were active, in a residential or other treatment program, inactive, absconders, those on warrant status, or supervised out of state;

(l) Whether the probation authority supervised any "paper-only" probationers who have never been under active supervision, and the number of those "paper-only" adult probationers on December 31, 2005;

(m) Whether the probation authority operated an intensive supervision program, a program involving electronic monitoring, or had any probationers enrolled in a program that approximates a bootcamp, and the number of adult

probationers in each of the programs as of December 31, 2005; and

(n) Whether the probation authority contracted out to a private agency for supervision, and the number of probationers supervised by a private agency that were included in the total population on December 31, 2005.

For the CJ–8A form, 117 reporters (from local authorities) responsible for keeping records on probationers will be asked to provide information for the following categories:

(a) As of January 1, 2005, and December 31, 2005, the number of adult probationers under their jurisdiction;

(b) The number of adults entering probation and discharged from probation during 2005;

(c) As of December 31, 2005, the number of male and female probationers under their jurisdiction;

(d) As of December 31, 2005, the number of adult probationers under their jurisdiction who were sentenced for a felony, misdemeanor, or other offense type.

(e) Whether the probation authority supervised any "paper-only" probationers who have never been under active supervision, and the number of those "paper-only" adult probationers on December 31, 2005; and

(f) Whether the probation authority supervised any probationers held in a community-based correctional facility, and the number of adult probationers held in each on December 31, 2005.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 523 respondents, each taking 1.17 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 668 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 5, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–13427 Filed 7–7–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 27, 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 Employment Standards Administration (ESA), 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: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: FECA Medical Report Forms, Claim for Compensation.

OMB Number: 1215–0103.

Frequency: As needed and annually.

Type of Response: Reporting.

Affected Public: Individuals or households; business or other for-profit; and Federal government.

Number of Respondents: 287,660.

Form No.	Estimated annual responses	Average response time (hours)	Estimated annual burden hours
CA–7	400	0.22	87
CA–16	130,000	0.08	10,833
CA–17	60,000	0.08	5,000
CA–20	80,000	0.08	6,667
CA–1332	500	0.50	250
CA–1090	325	0.17	54
CA–1303	3,000	0.33	1,000
CA–1305	10	0.33	3
CA–1331 / CA–1087	250	0.08	21
QCM*–Letters	1,000	0.08	83
OWCP–5a	7,000	0.25	1,750
OWCP–5b	5,000	0.25	1,250
OWCP–5c	15,000	0.25	3,750
TOTAL:	302,485	////////////////////	30,748

*Quality Case Management

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $120,994.

Description: These forms are used for filing claims for wage loss or permanent impairment due to a Federal employment-related injury, and to obtain necessary medical documentation to determine whether a claimant is entitled to benefits under the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.*

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–13417 Filed 7–7–05; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration be the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
CT20030001 (Jun. 13, 2003)
CT20030003 (Jun. 13, 2003)
CT20030004 (Jun. 13, 2003)
CT20030005 (Jun. 13, 2003)
New Hampshire
NH20030005 (Jun. 13, 2003)
NH20030007 (Jun. 13, 2003)
Rhode Island
RI20030001 (Jun. 13, 2003)
RI20030002 (Jun. 13, 2003)

Volume II

District of Columbia
DC20030001 (Jun. 13, 2003)
DC20030003 (Jun. 13, 2003)
Maryland
MD20030001 (Jun. 13, 2003)
MD20030002 (Jun. 13, 2003)
Maryland
MD20030010 (Jun. 13, 2003)
MD20030016 (Jun. 13, 2003)
MD20030021 (Jun. 13, 2003)
MD20030028 (Jun. 13, 2003)
MD20030029 (Jun. 13, 2003)
MD20030031 (Jun. 13, 2003)
MD20030037 (Jun. 13, 2003)
MD20030042 (Jun. 13, 2003)
MD20030043 (Jun. 13, 2003)
MD20030048 (Jun. 13, 2003)
MD20030058 (Jun. 13, 2003)
Pennsylvania
PA20030001 (Jun. 13, 2003)
PA20030002 (Jun. 13, 2003)
PA20030003 (Jun. 13, 2003)
PA20030004 (Jun. 13, 2003)
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PA20030006 (Jun. 13, 2003)
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PA20030061 (Jun. 13, 2003)
PA20030062 (Jun. 13, 2003)
PA20030065 (Jun. 13, 2003)
Virginia
VA20030092 (Jun. 13, 2003)
VA20030099 (Jun. 13, 2003)
West Virginia
WV20030002 (Jun. 13, 2003)
WV20030006 (Jun. 13, 2003)
Kentucky
KY20030001 (Jun. 13, 2003)
KY20030002 (Jun. 13, 2003)

KY20030003 (Jun. 13, 2003)
KY20030004 (Jun. 13, 2003)
KY20030005 (Jun. 13, 2003)
KY20030006 (Jun. 13, 2003)
KY20030007 (Jun. 13, 2003)
KY20030025 (Jun. 13, 2003)
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KY20030032 (Jun. 13, 2003)
KY20030035 (Jun. 13, 2003)
KY20030044 (Jun. 13, 2003)
South Carolina
SC20030003 (Jun. 13, 2003)
SC20030038 (Jun. 13, 2003)

Volume IV

Illinois
IL20030001 (Jun. 13, 2003)
IL20030002 (Jun. 13, 2003)
IL20030006 (Jun. 13, 2003)
IL20030007 (Jun. 13, 2003)
Indiana
IN20030001 (Jun. 13, 2003)
IN20030002 (Jun. 13, 2003)
IN20030003 (Jun. 13, 2003)
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Minnesota
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MN20030058 (Jun. 13, 2003)
MN20030059 (Jun. 13, 2003)
MN20030061 (Jun. 13, 2003)
MN20030062 (Jun. 13, 2003)
Wisconsin
WI20030001 (Jun. 13, 2003)
WI20030002 (Jun. 13, 2003)
WI20030003 (Jun. 13, 2003)
WI20030004 (Jun. 13, 2003)
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WI20030007 (Jun. 13, 2003)
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WI20030029 (Jun. 13, 2003)
WI20030030 (Jun. 13, 2003)
WI20030032 (Jun. 13, 2003)
WI20030039 (Jun. 13, 2003)
WI20030040 (Jun. 13, 2003)
WI20030046 (Jun. 13, 2003)
WI20030047 (Jun. 13, 2003)
WI20030048 (Jun. 13, 2003)

Volume V

Missouri
MO20030001 (Jun. 13, 2003)
MO20030005 (Jun. 13, 2003)
MO20030008 (Jun. 13, 2003)
MO20030039 (Jun. 13, 2003)
New Mexico
NM20030001 (Jun. 13, 2003)
Texas
TX20030082 (Jun. 13, 2003)
TX20030105 (Jun. 13, 2003)

Volume VI

Alaska
AK20030001 (Jun. 13, 2003)
AK20030005 (Jun. 13, 2003)
AK20030006 (Jun. 13, 2003)
AK20030008 (Jun. 13, 2003)
Colorado
CO20030006 (Jun. 13, 2003)
CO20030009 (Jun. 13, 2003)
CO20030011 (Jun. 13, 2003)
CO20030012 (Jun. 13, 2003)
CO20030013 (Jun. 13, 2003)
CO20030016 (Jun. 13, 2003)
CO20030017 (Jun. 13, 2003)
Idaho
ID20030002 (Jun. 13, 2003)
ID20030003 (Jun. 13, 2003)
ID20030015 (Jun. 13, 2003)
ID20030016 (Jun. 13, 2003)
ID20030017 (Jun. 13, 2003)
ID20030018 (Jun. 13, 2003)
ID20030019 (Jun. 13, 2003)
Oregon
OR20030001 (Jun. 13, 2003)
OR20030002 (Jun. 13, 2003)
OR20030007 (Jun. 13, 2003)
Washington
WA20030001 (Jun. 13, 2003)
WA20030002 (Jun. 13, 2003)
WA20030003 (Jun. 13, 2003)
WA20030004 (Jun. 13, 2003)
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WA20030008 (Jun. 13, 2003)
WA20030009 (Jun. 13, 2003)
WA20030011 (Jun. 13, 2003)
WA20030013 (Jun. 13, 2003)
WA20030023 (Jun. 13, 2003)
Wyoming
WY20030001 (Jun. 13, 2003)
WY20030002 (Jun. 13, 2003)
WY20030003 (Jun. 13, 2003)
WY20030004 (Jun. 13, 2003)
WY20030005 (Jun. 13, 2003)

Volume VII

Arizona
AZ20030005 (Jun. 13, 2003)
Hawaii
HI20030001 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at (*http://www.access.gpo.gov/davisbacon*). They are also available electronically by subscription to the Davis-Bason Online Service (*http://davisbacon/fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery to modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscription may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issues in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 30th day of June 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–13317 Filed 7–7–05; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Mass Layoff Statistics (MLS) Program Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 6, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Ms. Hobby can be reached on 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 309(2)(a)(1)(A)(iii) of the Workforce Investment Act (WIA) states that the Secretary of Labor shall oversee development, maintenance, and continuous improvements of the program to measure the incidence of, industrial and geographical location of, and number of workers displaced by, permanent layoffs and plant closings. Prior to the WIA, section 462(e) of Public Law 97–300, the Job Training Partnership Act (JTPA), provided that the Secretary of Labor develop and maintain statistical data relating to permanent mass layoffs and plant closings and issue an annual report. The report includes, at a minimum, the number of plant closings and mass layoffs, and the number of workers affected. The data are summarized by geographic area and industry.

The Mass Layoff Statistics (MLS) program uses a standardized, automated approach to identify, describe, and track the impact of major job cutbacks. The program utilizes, to the greatest degree possible, existing Unemployment Insurance (UI) records and computerized data files, supplemented by direct employer contact. Its major features include:

- The identification of major layoffs and closings through initial UI claims filed against the identified employer;
- The use of existing files on claimants to obtain basic demographic and economic characteristics on the individual;
- The telephone contact of those employers meeting mass layoff criteria to obtain specific information on the nature of the layoff and characteristics of the establishment;
- The identification of the continuing impact of the mass layoff on individuals by matching affected initial claimants with persons in claims status;
- The measurement of the incidence of the exhaustion of regular state UI benefits by affected workers; and,
- The identification and quantifying the effects that extended mass layoffs have on the movement of work.

In the program, State Workforce Agencies (SWAs) submit one report each quarter, and a preliminary, summary report each month. These computerized reports contain information from State administrative files and information obtained from those employers meeting the program criteria of a mass layoff.

Congress has provided for the implementation of the MLS program by the Bureau of Labor Statistics (BLS) through the Fiscal Years 1984–1992 appropriations for the Departments of Labor, Health and Human Services, Education, and related agencies. The program was not operational in Fiscal Years 1993 and 1994. Program operation resumed in Fiscal Year 1995 with funds provided by the Employment and Training Administration (ETA). Beginning in fiscal year 2004, funding for the MLS program became part of the Bureau of Labor Statistics permanent budget. Also in 2004, the scope of the MLS program was redefined to cover only the private nonfarm economy for extended mass layoffs due to budget constraints.

In addition to the BLS uses of MLS data, such data are used by Congress, the Executive Branch, the business, labor, and academic communities, SWAs, and the U.S. Department of Labor for both macro- and microeconomic analysis.

A Congressionally mandated use of mass layoff data includes the WIA, which replaces Title III of the JTPA. Section 133 of the WIA encourages the use of MLS data in substate allocations relating to dislocated worker employment and training activities.

State agencies use the MLS data in various ways, including the identification of geographic areas in need of special manpower services; ailing or troubled industries; specific employers needing assistance; and outreach activities for the unemployed.

There is no other comprehensive source of statistics on either establishments or workers affected by mass layoffs and plant closings; therefore, none of the aforementioned data requirements could be fulfilled if this data collection did not occur.

At the present time, all states, the District of Columbia, and Puerto Rico are participating in the program.

II. Current Action

Office of Management and Budget (OMB) clearance is being sought for the Mass Layoff Statistics (MLS) Program.

The difference between the Current OMB inventory and the total annual hours requested results from a decrease of 6,000 employer respondents. This decrease is largely due to the result of the scope of the MLS program being redefined in January 2004 to cover only the private nonfarm economy for extended mass layoff events.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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 submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Mass Layoff Statistics Program.

OMB Number: 1220–0090.

Affected Public: Business or other for profit; not-for-profit institutions; Farms; Federal government; State, Local or Tribal government.

Total Respondents: 17,052.

Frequency: SWAs report quarterly and monthly. Affected employers report on occasion.

Total Responses: 17,832.

Average Time Per Response: 60 minutes for SWAs and 20 minutes for employers.

Estimated Total Burden Hours: 72,587 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 24th day of June, 2005.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05–13415 Filed 7–7–05; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Telephone Point of Purchase Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before September 6, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specific items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data that allows items that are priced in the CPI to be properly weighted.

II. Current Action

Office of Management and Budget clearance is being sought for the Telephone Point of Purchase Survey (TPOPS).

Since 1997, the survey has been administered quarterly via a computer-assisted-telephone-interview. This survey is flexible and creates the possibility of introducing new products into the CPI in a timely manner. The data collected in this survey are necessary for the continuing construction of a current outlet universe from which locations are selected for the price collection needed for calculating the CPI. Furthermore, the TPOPS provides the weights used in selecting the items that are priced at these establishments. This sample design produces an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers.

For this clearance, the BLS and the Census Bureau have completed a sample redesign based on the 2000 Census to be implemented for the TPOPS in 2006. While the new sample is introduced, there will be some overlap of old and new samples in some primary sampling units (PSUs) or areas in which TPOPS data are collected. In addition, each new PSU will have an increased sample to be able to field a full outlet sample to collect prices for the CPI.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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 submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Telephone Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals or households.

Total Respondents: 22,627.

Frequency: Quarterly.

Total Responses: 59,964.

Average Time Per Response: 12 minutes.

Estimated Total Burden Hours: 11,993 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 24th day of June, 2005.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05–13416 Filed 7–7–05; 8:45 am]

BILLING CODE 4510–28–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

3. *The form number if applicable:* NRC Form 653, 653A,and 653B, "Transfers of Industrial Devices Report."

4. *How often the collection is required:* There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. In addition, recordkeeping must be performed on an on-going basis, and reports of transfer of byproduct material must be reported every 5 years, and in a few cases, every year.

5. *Who will be required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees or persons exempt from licensing.

6. *An estimate of the number of responses:* 4147 (650 responses + 275 recordkeepers for NRC licensees and 2522 responses + 700 recordkeepers for Agreement State licensees).

7. *The estimated number of annual respondents:* 975 (275 NRC licensees and 700 Agreement State licensees).

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 135,741 (36,623 hours for NRC licensees [5,225 hours reporting, or an average of 8 hours per response + 31,398 hours recordkeeping, or 114 hours per recordkeeper] and 99,118 hours for Agreement State licensees [20,863 hours reporting, or an average of 8.3 hours per response + 78,255 hours recordkeeping, or an average of 112 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. Abstract: 10 CFR part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees or persons exempt from licensing. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a specific license, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. In addition, 10 CFR part 32 prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 8, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John Asalone; Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 30th day of June, 2005.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–3601 Filed 7–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 161st meeting on July 19–21, 2005, Room T–2B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 8, 2004 (69 FR 71084).

The schedule for this meeting is as follows:

Tuesday, July 19, 2005

10:15 a.m.–10:30 a.m.: Opening Statement (Open)—The ACNW Chairman will make opening remarks regarding the conduct of today's sessions.

10:30 a.m.–12 Noon: Preparation of ACNW Reports (Open)—The Committee will discuss potential letter reports on Stakeholder Views on Recommended Standards and Regulations for Yucca Mountain, April 2005 CNWRA Program Review and ACNW Decommissioning Working Group Meeting. Other potential letter reports may be discussed.

1:30 p.m.–3:30 p.m.: Development of Risk-Informed Regulations Within the NRC and Its Application to the Nonreactor Arena (Open)—The Committee will hear a briefing by the ACNW senior management and staff regarding the evolution of risk-informed regulations, and the difference between reactor and nonreactor applications.

3:30 p.m.–4 p.m.: ACNW 's April 2005 Visit to Japan Follow-Up (Open)—The Committee will hear a report from those Committee members who visited the Radioactive Waste Management Facilities in Japan.

4:15 p.m.–5:15 p.m.: Occupational Safety and Health Administration's (OSHA) Request for Additional Information on Ionizing Radiation (Open)—The Committee will hear the

staff's views on and provide comments on OSHA's May 2005 request for information regarding exposure of workers to ionizing radiation, its uses in different industries, health effects, and existing workplace control programs.

5:15 p.m.–5:45 p.m.: ACNW Low-Level Radioactive Waste Management Paper: Draft No. 2 (Open)—The Committee will discuss and comment on draft No. 2 of the white paper on low-level radioactive waste management issues.

Wednesday, July 20, 2005

9:30 a.m.–9:45 a.m.: Opening Remarks by the ACNW Chairman (Open)—The ACNW Chairman will begin the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

9:45 a.m.–10:30 a.m.: Staff Briefing on International Atomic Energy Agency (IAEA) Requirements Document DS–154: Design and Operation of Facilities for Geological Disposal of Radioactive Waste (Open)—The Committee will hear a briefing by and hold discussions with representatives of the Office of Nuclear Material Safety and Safeguards (NMSS) regarding the IAEA document that is intended to provide guidance to policymakers, regulators, and operators concerned with the development and regulatory control of geologic disposal facilities for the management of long-lived radioactive waste.

10:45 a.m.–11:45 a.m.: Review of Generic Waste-Related Research in the Office of Nuclear Regulatory Research (RES) (Open)—The Committee will hear a briefing by and hold discussions with representatives of the Office of Nuclear Regulatory Research (RES) regarding the waste-related research programs sponsored by that office.

1 p.m.–2 p.m.: RES White Paper on Collective Dose (Open)—The Committee will hear a briefing by and hold discussions with representatives of the RES staff regarding development of a white paper that describes the use of collective dose in making regulatory decisions.

2 p.m.–4 p.m.: Continuation of Discussions of Possible Letters/Reports (Open)—The Committee will discuss prepared letters and determine whether letters would be written on topics discussed during the meeting.

4:30 p.m.–5:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities, and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee meetings.

Thursday, July 21, 2005

8:30 a.m.–12 Noon: Continuation of Discussion of Possible Letters/Reports (Open)—The Committee will discuss prepared letters and determine whether letters would be written on topics discussed during the meeting.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 18, 2004 (69 FR 61416). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Ms. Sharon A. Steele, (Telephone (301) 415–6805), between 7:30 a.m. and 4 p.m. e.t., as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Ms. Steele as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Ms. Steele.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301) 415–8066), between 7:30 a.m. and 3:45 p.m. e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: July 1, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–3600 Filed 7–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on July 19–20, 2005, Room O–1G16, 11555 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Tuesday, July 19, 2005—8:30 a.m. until the conclusion of business

Wednesday, July 20, 2005—8:30 a.m. until the conclusion of business

The Subcommittee will review the latest proposed staff revision to Regulatory Guide 1.82 related to ECCS Net Positive Suction Head. The staff will describe its plans to provide guidance related to containment overpressure credit. The staff will also present the results of ongoing research concerning interactions of reactor coolant with debris in the reactor containment sump. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: (301) 415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named

individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: June 30, 2005.

Sharon A. Steele,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E5–3599 Filed 7–7–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

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: Evidence of Marital Relationship, Living with Requirements; OMB 3220–0021. To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of an employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence to support the existence of a valid marriage between a spouse or widow(er) annuity applicant and a railroad employee, the RRB needs to obtain information to determine if a valid marriage existed. The RRB utilizes Forms G–124, Statement of Marital Relationship; G–124a, Statement Regarding Marriage; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes no changes to the forms in the collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows:]

Form #(s)	Annual Responses	Time (Min)	Burden (Hrs)
G–124 (In person)	125	15	31
G–124 (By mail)	75	20	25
G–124a	300	10	50
G–237 (In person)	75	15	19
G–237 (By mail)	75	20	25
G–238 (In person)	150	3	8
G–238 (By mail)	150	5	13
G–238a	150	10	25
Total	1,100		196

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. 05–13444 Filed 7–7–05; 8:45 am]

BILLING CODE 7905–01–P

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: Evidence for Application of Overall Minimum: OMB 3220–0083.

Under section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount that would be payable if the employee's railroad service had been covered by the Social Security Act. This is referred to as the Special Guaranty computation or the Retirement Overall Minimum (O/M) provision. To administer the Special Guaranty provision, the RRB requires information about a retired employee's spouse and any child who is not currently eligible for benefits under the RRA but might have been eligible for benefits under the Social Security Act if

the employee's railroad service had been covered by that Act.

The RRB currently obtains the required information by the use of forms G–319 (Statement Regarding Family and Earnings for Special Guaranty Computation) and G–320 (Statement by Employee Annuitant Regarding Student Age 18–19). One form is completed by each respondent.

The RRB proposes significant burden impacting changes to Form G–319 and Form G–320. The major changes proposed are primarily to gather information needed due to the Railroad Retirement and Survivors Improvement Act which created a new category of employees whose families might qualify for the Special Guaranty Computation if the employee has less than 120 months of railroad service, but at least 60 months of railroad service after 1995, and to expand the use of Form G–320 to include student attendance monitoring. Proposed Form G–319 will be renamed, "Statement Regarding Family and Earnings for the Special Guaranty Computation". Proposed Form G–320 will be renamed "Student Questionnaire for the Special Guaranty Computation". Transmittal letters containing completion instructions have been developed for both of the proposed forms.

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (min)	Burden (hrs)
G–319 *Employee completed:*			
With assistance	100	26	43
Without assistance	5	55	5
G–319 *Spouse completed:*			
With assistance	100	30	50
Without assistance	5	60	5
G–320:			
Age 18 at Special Guaranty	95	15	24
Begin Date or Special Guaranty.			
Age 18 Attainments.			
G–320:			
Student Monitoring done in Sept., March, and at end of school year	170	15	42
Total	475		169

Additional Information or Comments: To request more information or to obtain a copy of the information collection justifications, 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 N. Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–13445 Filed 7–7–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51938; File No. SR–CBOE–2005–40]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Hybrid Opening System

June 29, 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 May 16, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE submitted Amendment No. 1 on June 24, 2005.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the Hybrid Opening System ("HOSS") procedures. The text of the proposed rule change is set forth below. Additions are in italics. Deletions are in brackets.

CHAPTER VI

Doing Business on the Exchange Floor

Rule 6.2B. Hybrid Opening System ("HOSS")

Rule 6.2B. (a) No change.

(b) After the Opening Notice is sent, the System will calculate and provide the Expected Opening Price ("EOP") and expected opening size ("EOS") given the current resting orders during the EOP Period ("EOP Period"). The appropriate FPC will establish the duration of the EOP Period on a class basis at between five and sixty seconds. The EOP, which will be calculated and disseminated to market participants every few seconds, is the price at which the greatest number of orders in the Book are expected to trade. After the Opening Notice is sent, quotes and orders may be submitted without restriction. An EOP may only be calculated if: (i) there are market orders in the Book, or the Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals lowest offer), and (ii) *at least one* [the DPM's] quote [(or if there is no DPM appointed to the class, at least one quote from either a Market Maker or LMM with an appointment in the class)] is present and complies with the legal width quote requirements of Rule 8.7(b)(iv).

(c)–(d) No Change.

(e) The System will not open a series if one of the following conditions is met:

(i) [In classes in which a DPM has been appointed, there] *There* is no quote *present in the series that complies with the legal width quote requirements of Rule 8.7(b)(iv)* [from the DPM for the series. In classes in which no DPM has been appointed, there is no quote from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the rule text to reflect language recently approved in another filing.

at least one market-maker or LMM with an appointment in the class];

(ii) The opening price is not within an acceptable range (as determined by the appropriate FPC and announced to the membership via Regulatory Circular) compared to the [highest] *lowest* quote offer and the [[lowest] *highest* quote bid [(*e.g.*, the upper boundary of the acceptable range may be 125% of the highest quote offer and the lower boundary may be 75% of the lowest quote bid)]; or

(iii) No Change.

(f)–(i) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules relating to HOSS procedures. HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. For each class of options contracts approved for trading, the appointed designated primary market maker ("DPM") conducts an opening rotation, which must be held promptly following the opening of the underlying security in the primary market. For purposes of HOSS, an underlying security shall be deemed to have opened in the primary market if such market has (i) reported a transaction in the underlying security, or (ii) disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever occurs first.

Currently, CBOE rules do not allow a Hybrid option series to be opened unless the DPM for that option class has submitted a quote that complies with the legal quote width requirements of CBOE Rule 8.7(b)(v),[4] regardless of whether other market participants have timely submitted legal opening quotes.[5] In an effort to better ensure that all options series are promptly opened on CBOE, the Exchange is proposing to allow HOSS to open an option series as long as any market participant,[6] not just the DPM, has submitted an opening quote that complies with the legal width quote requirements. It should be noted that, under the proposal, even though HOSS can open a series without a DPM's quote, DPMs, as well as electronic DPMs ("e-DPMs"), remain obligated under CBOE rules to timely submit opening quotes.[7]

Finally, this rule change proposes to clarify one of the conditions necessary for opening a series. Current CBOE Rule 6.2B(e)(ii) provides that, in order for the Hybrid System to open a series, the opening price must be within an acceptable range (as determined from time to time by the appropriate Exchange floor procedure committee) compared with the highest quote offer and the lowest quote bid. The Exchange proposes to change the method for determining the acceptable range to use the highest bid and the lowest offer, which could provide for an even tighter opening price range. In addition, the example provided in the same rule would be eliminated.

2. Statutory Basis

By allowing more participants' quotes to be included in the opening process, the Exchange is increasing the likelihood that any particular option series will open, and, as such, the Exchange believes this proposed rule change, as amended, is consistent with Section 6(b) of the Act[8] in general, and further the objectives of Section 6(b)(5) in particular,[9] in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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 Number SR–CBOE–2005–40 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–CBOE–2005–40. 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

[4] *See* CBOE Rules 6.2B(b) and (e).

[5] Other factors must also be satisfied. The opening price for the series must be within an acceptable range and the opening trade cannot create a market order imbalance. *See* CBOE Rule 6.2B(e)(ii) and (iii).

[6] This includes a quote from a DPM, e-DPM, market maker, or a remote market maker. *See* CBOE Rule 6.45A.

[7] *See* Securities Exchange Act Release No. 51670 (May 9, 2005), 70 FR 28338 (May 18, 2005) (order approving SR–CBOE–2005–027, which requires e-DPMs to submit opening quotes in 100% of the series in all of their respective allocated option classes).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–40 and should be submitted by July 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3594 Filed 7–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51944; File No. SR–CHX–2005–19

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Rule Interpretation Relating to Trading of Nasdaq National Market Securities in Subpenny Increments

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2005, the Chicago Stock Exchange, Incorporated ("CHX" 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 CHX. The Exchange has filed this 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. 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 CHX has proposed to extend, until the effective date of new Rule 612 of Regulation NMS,[5] a pilot rule interpretation (Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments") which requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq National Market securities in subpenny increments, expires on June 30, 2005. The Exchange proposes that the pilot remain in effect until the effective date of Rule 612.

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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item III below. The CHX 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 Changes

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")[6] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the NBBO by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq National Market securities in subpenny increments, has been extended many times and now is set to expire on June 30, 2005.[7] The Exchange is not proposing any substantive (or typographical) change to the pilot; rather, the Exchange proposes that the pilot be immediately reinstated and remain in effect through the effective date of Rule 612 of Regulation NMS.[8]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[9] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.[11]

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 5 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Reg. NMS Release"). Rule 612 will become effective on August 29, 2005.

[6] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001) (SR–CHX–2001–07).

[7] *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003); 47951 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending the pilot through December 1, 2003); 48871 (December 3, 2003), 68 FR 69097 (December 11, 2003) (extending pilot through June 30, 2004); 49994 (July 9, 2004), 69 FR 42486 (July 15, 2004) (extending pilot through June 30, 2005).

[8] *See supra* note 5.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] With the Exchange's permission, the Commission deleted irrelevant language from the notice relating to the Exchange's continuing education programs. Telephone conference between Ellen Neely, President & General Counsel, Exchange, and Raymond Lombardo, Special Counsel, Division of Market Regulation, Commission, on June 29, 2005.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchange asserts the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [12] of the Act and Rule 19b–4(f)(6) [13] thereunder because the 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.[14] The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately so that the pilot can continue uninterrupted.

The Commission hereby grants the request.[15] The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption and designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–CHX–2005–19 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. SR–CHX–2005–19. 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 changes 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 such filing will also be available for inspection and copying at the principal office of the CHX. 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 No. SR–CHX–2005–19 and should be submitted on or before July 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3598 Filed 7–7–05; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] In addition, Rule 19b–4(f)(6)(iii) states that the Exchange must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. The Commission has determined to waive the requirement in this case.

[15] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51936; File No. SR–NSX–2005–04]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend an Existing Pilot Rule That Stipulates the Price Increment by Which Designated Dealers Must Better Customer Subpenny Orders

June 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2005, the National Stock Exchange℠ ("Exchange") [3] 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 Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) 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 comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has a pilot program under Exchange Rule 12.6, "Customer Priority," Interpretation .02, which requires an Exchange Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order. Under the pilot program, the Specialist is required to better a customer limit order at the national best bid or offer ("NBBO") by at least one penny, or by at least the nearest penny increment if the customer limit order is priced outside the NBBO.

The pilot program currently in effect is scheduled to expire on June 30, 2005.[6] With the instant proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange changed its name and was formerly known as The Cincinnati Stock Exchange or "CSE." *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (File No. SR–CSE–2001–06) (establishing pilot); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) (first extension of pilot) and 46929 (November 27,

change, the Exchange extends the pilot through June 30, 2006.[7] The Exchange is making no substantive changes to the pilot program, other than extending its operation through June 30, 2006. The text of the proposed rule change is available at the Exchange'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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its pilot program, under Exchange Rule 12.6,[8] which relates to the trading of securities in subpenny increments.[9] Interpretation .02 of Rule 12.6 requires a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[10]

The purpose of the Interpretation is to prevent a Specialist from taking unfair advantage of a customer limit order held by that Specialist by trading ahead of the order with an incoming market or marketable limit order. Notwithstanding the fact that a Specialist may price-improve the incoming order by providing a price superior to that of the customer limit orders it holds, the customer should have a reasonable expectation of having its order filled at the limit order price. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order price that he or she holds (not the customer's quoted price).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the forgoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder[14] because the rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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 protection of investors

2002), 67 FR 72711 (December 6, 2002) (second extension of pilot); 47941 (May 29, 2003), 68 FR 33751 (June 5, 2003) (third extension of pilot); 48869 (December 3, 2003), 68 FR 68684 (December 9, 2003) (fourth extension of pilot); and 49913 (June 24, 2004), 69 FR 40437 (July 2, 2004) (fifth extension of pilot).

[7] The Exchange understands that the Commission's Regulation NMS ("Reg NMS") may have an impact on this pilot program. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). The Exchange intends to assess what impact Rule 612 may have on the pilot program and to accordingly revise the pilot program as appropriate to be consistent with the Rule 612 when it becomes effective.

[8] Exchange Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[9] In connection with the pilot Interpretation .02, the Exchange has also received a Commission exemption from Rules 11Ac1-1, 11Ac1-2, and 11Ac1-4 under the Act, 17 CFR 240.11Ac1-1, 240.11Ac1-2, and 240.11Ac1-4, that allows Exchange members to display their quotes for Nasdaq- and exchange-listed securities in whole penny increments while trading in subpenny increments. *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, (July 26, 2002) (granting initial exemption) in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (November 27, 2001) (requesting initial exemption); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange (September 25, 2002) (amending and extending initial exemption) in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (September 18, 2002) (requesting first extension); letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange (November 27, 2002) (granting second extension) in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (November 20, 2002) (requesting second extension); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, (May 29, 2003) (granting third extension) in response to letter from Jeffrey T. Brown, Senior Vice President & General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (May 19, 2003) (requesting third extension); letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jennifer M. Lamie, Assistant General Counsel & Secretary, Exchange (December 1, 2003) (granting fourth extension) in response to letter from Jennifer M. Lamie, Assistant General Counsel & Secretary, Exchange, to Annette Nararеth, Director, Division, Commission (November 21, 2003) (requesting fourth extension); letter from David S. Shillman, Associate Director, Division, Commission, to James C. Yong, Senior Vice President, Regulation and General Counsel, Exchange (June 30, 2004) (granting fifth extension) in response to letter from James C. Yong, Senior Vice President, Regulation and General Counsel, Exchange, to Annette Nazareth, Director, Division, Commission (May 20, 2004) (requesting fifth extension). In conjunction with the proposed rule change, the Exchange has requested that the Commission extend its exemption from Rules 11Ac1-1, 11Ac1-2 and 11Ac1-4 of the Act to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* letter from James C. Yong, Senior Vice President and Chief Regulatory Officer, Exchange, to Annette Nazareth, Director, Division, Commission (June 28, 2005).

[10] Interpretation .01 to Rule 12.6 provides that, "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

[11] 15 U.S.C. 78f(6).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b-4(f)(6).

and the public interest.[15] The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become effective immediately, so that the pilot can continue uninterrupted.

The Commission hereby grants the request.[16] The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will allow the benefits of Manning protection provided by the pilot to continue without interruption. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2005–04 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. SR–NSX–2005–04. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSX–2005–04 and should be submitted on or before July 29, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3592 Filed 7–7–05; 8:45 am]

BILLING CODE 8010–01–P

[15] In addition, Rule 19b-4(f)(6)(iii) states that the Exchange must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. The Exchange has satisfied this pre-filing requirement.

[16] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51947; File No. SR–Phlx–2005–39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Equity Option Specialist Deficit (Shortfall) Fee

June 30, 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 June 6, 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, II and III below, which Items have been prepared by the Phlx. The Exchange filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Equity Option Specialist Deficit (Shortfall) Fee ("shortfall fee") to no longer charge the equity option specialist the shortfall fee when one or more Streaming Quote Traders ("SQTs")[5] or Remote Streaming Quote Traders ("RSQTs")[6] trading on the Exchange's electronic options trading platform, Phlx XL[7], have been designated to receive Directed Orders[8] from Order Flow Providers[9] for the same option in which that specialist unit is acting as the specialist.

Currently, the Exchange charges equity options specialist units[10] a shortfall fee of $0.35 per contract to be paid monthly in connection with transactions in any top 120 equity

[4] 17 U.S.C. 240.19b–4(f)(2).

[5] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. *See* Exchange Rules 1014(b)(ii) and 1080.

[6] An RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Exchange Rule 1014(b)(ii)(B). *See* Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR–Phlx–2004–90) and 51429 (March 24, 2005) (SR–Phlx–2005–12).

[7] In July 2004, the Exchange began trading equity options on Phlx XL, followed by index options in December 2004. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004), SR–Phlx–2003–59).

[8] The term "Directed Order" means any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider (defined below in footnote 9). *See* Exchange Rule 1080(l). The provisions of Rule 1080(l) are in effect of a one-year pilot period to expire on May 27, 2006. *See* Securities Exchange Act Release No. 51759 (May 27, 2005) (SR–Phlx–2004–91).

[9] An "Order Flow Provider" is any member or member organization that submits, as agent, customer orders to the Exchange. *See* Exchange Rule 1080(l).

[10] The Exchange uses the terms "specialist unit" and "specialist" interchangeably herein.

option,[11] including Streaming Quote Options traded on Phlx XL,[12] in most cases,[13] if at least 12 percent of the total national monthly contract volume in that option is not effected on the Exchange in that month.

A shortfall fee cap is applied to transactions in any of the top 120 equity options pursuant to the following schedule: (1) If Phlx volume in any top 120 equity option, except options on Nasdaq-100 Index Tracking Stock℠ (traded under the symbol "QQQQ"),[14] is less than or equal to 50 percent of the current threshold volume (presently six percent), a cap of $10,000 will apply; (2) If Phlx volume in any top 120 equity option, except options on QQQQ, is greater than 50 percent of the current threshold volume (presently six percent) and less than 12 percent of the total national monthly contract volume, a cap of $5,000 will apply; (3) If Phlx volume in options on QQQQ is less than or equal to 50 percent of the current threshold volume (presently six percent), a cap of $20,000 will apply; and (4) If Phlx volume in options on QQQQ is greater than 50 percent of the current threshold volume (presently six percent) and less than 12 percent of the total national monthly contract volume, a cap of $10,000 will apply.

Any applicable cap will be pro rated in the month that the Exchange's system designates the option(s) to be directed to a specific SQT or RSQT.

The amount of the shortfall fee and the applicable caps as described above, as well as all other aspects of the shortfall fee, will remain unchanged.[15]

This proposal is scheduled to apply to trades settling on or after June 6, 2005.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 shortfall fee is designed to create an incentive for options specialists to promote the options for which they are the designated specialists. The purpose of this proposal is to address the effect of the shortfall fee as it relates to options traded by SQTs or RSQTs. The Exchange believes that it would be unreasonable to impose a shortfall fee on specialists when SQTs or RSQTs will be competing for market share on a relatively equal basis, as the shortfall fee was designed, in part, to create an incentive for specialists to promote the options they have been allocated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(4) of the Act,[17] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act[18] and subparagraph (f)(2) of Rule 19b-4 thereunder,[19] in that it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2005-39 on the subject line.

[11] A top 120 equity option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for specified month, based on volume reflected by The Options Clearing Corporation.

[12] *See* Securities Exchange Act Release No. 51096 (January 28, 2005), 70 FR 6495 (February 7, 2005) (SR–Phlx–2004–96).

[13] An exception to the 12 percent volume threshold amount relates to a transition period for newly listed top 120 options or for any top 120 option (including those equity options listed on the Exchange before February 1, 2004) acquired by a new specialist unit. During the transition period, the shortfall fee is imposed in stages such that the requisite volume threshold is zero percent for the first full calendar month of trading, three percent for the second full calendar month of trading, six percent for the third full calendar month of trading, nine percent for the fourth full calendar month of trading and 12 percent for the fifth full calendar month of trading (and thereafter). *See* Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3, 2004) (SR–Phlx–2004–08).

[14] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust ℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[15] For example, the total volume calculation for purposes of determining the requisite threshold will continue to be based on the current month's volume and the three-month differentiation to determine whether an equity option is considered a top 120 option will also remain in effect, *i.e.* December's top 120 option are based on September's volume. In addition, the $10,000 cap applied in connection with the tiered threshold schedule for any newly listed top 120 option and any top 120 options acquired by a new specialist unit, not affiliated with an existing Phlx options specialist unit will remain unchanged. *See* Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3, 2004) (SR–Phlx–2004–08).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] U.S.C. 78s(b)(3)(A)(ii).

[19] CFR 240.19b-4(f)(2).

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-2005–39. 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 Section. 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-2005–39 and should be submitted on or before July 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3593 Filed 7–7–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10132]

Nebraska Disaster # NE–00002

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA—1590—DR), dated June 23, 2005.

Incident: Severe Storms and Flooding.

Incident Period: May 11, 2005, through May 12, 2005.

DATES: *Effective Date:* June 23, 2005.

Physical Loan Application Deadline Date: August 22, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on June 23, 2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Adams, Buffalo, Fillmore, Frontier, Hall, Hamilton, Howard, Kearney, Merrick, Seward, York

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10132.

(Catalog of Federal Domestic Assistance Number 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–13407 Filed 7–7–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Advisory Council; Public Meeting

The U.S. Small Business Administration, National Advisory Council will be hosting a public meeting via conference call to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, or interested others. The conference call will take place on Thursday, July 28, 2005, at 12 p.m. eastern standard time. The call number is 1–866–740–1260 and enter access code 2057001.

Additionally, we will be using *http://www.readtytalk.com* to offer a live display of a PowerPoint presentation. The access code is the same: 2057001. Please log-in 10 minutes before the conference.

Anyone wishing to participate or make an oral presentation to the Board must contact Adrienne Abney-Cole, Administrative Assistant, National Advisory Council, no later than Thursday, July 18, 2005, via e-mail or fax. Adrienne Abney-Cole, Administrative Assistant, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20516, (202) 205–6742 phone, or (202) 481–0112 fax, or e-mail *Andrienne.Abney-Cole@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–13408 Filed 7–7–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5099]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: The International Telecommunication Advisory Committee announces a meeting of U.S. Study Group A on July 28, 2005, which will be held to prepare positions for the next meeting of ITU–T Study Group 3, and three meetings to prepare for ITU Development Sector Study Group Meetings 1 and 2. Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair.

The International Telecommunication Advisory Committee (ITAC) will meet on Thursday, July 28, 2005, 2:00–4:00pm, to prepare U.S. and company contributions for the next meeting of ITU–accounting principles, which will take place September 12–16, 2005. The U.S. Study Group A meeting will be held at the AT&T Innovation Center, 1133 21st St, Suite 210, Washington, DC. A conference bridge will be available to those outside the Washington Metro area. Directions to the meeting and conference bridge information may be obtained from *minardje@state.gov.*

The International Telecommunication Advisory Committee (ITAC) will meet on Tuesday, July 26, 2005, and on August 2 and August 30 to prepare for the ITU–D Study Group 1 and 2 meetings, which will take place in

[20] 17 CFR 200.30–3(a)(12).

September in Geneva. All preparatory meetings will take place from 10 a.m. to 12 p.m. in Room 2533A of the State Department. Entrance to the Department of State is controlled; those intending to attend a meeting should send their clearance data by fax to (202) 647–7407 or e-mail to *mccorklend@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your photo, U.S. passport, or U.S. Government identification. Directions to the meeting may be obtained by calling 202 647–2592.

Dated: June 30, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications & Information Policy, Department of State.

[FR Doc. 05–13482 Filed 7–7–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST 2005–21776]

Notice of Request for Renewal of a Previously Approved Collection.

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 27, 2005 (FR Vol. 70, No. 80, page 21835). No comments were received.

DATES: Comments on this notice must be received by August 8, 2005, attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bernice C. Gray or John H. Kiser, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Title: Tariffs.

OMB Number: 2106–0009.

Affected Public: The majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with 60 seats or less and 18,000 pounds payload or less that off on-demand air-taxi service are not required to file such tariffs.

Annual Estimated Burden: 650,000 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on June 30, 2005.

Michael Robinson,

Information Technology Program Management, United States Department of Transportation.

[FR Doc. 05–13418 Filed 7–7–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21013]

Casino Transportation, Inc.—Acquisition of Control and Lease—Four Winds, Inc., d/b/a People's Choice Transportation, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Casino Transportation, Inc. (CTI), a federally regulated motor passenger carrier (MC–279356), has filed an application under 49 U.S.C. 14303 to purchase the stock of and lease the operating authorities of Four Winds, Inc., d/b/a People's Choice Transportation, Inc. (People's Choice), also a federally regulated motor passenger carrier (MC–264768). Additionally, Craig Caldwell (Caldwell), Greg Waterman, and Robert Waterman (Watermans) seek authority to control both carriers and Joanne Lah (Lah) seeks limited control of certain elements of the operations of both carriers for a limited period of time. Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by August 22, 2005. Applicants may file a reply by September 6, 2005. If no comments are filed by August 22, 2005, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21013 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to CTI's representative: Charles M. Williams, Charles M. Williams, P.C., 303 East 17th Street, Suite 888, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1608 [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: CTI is a Colorado corporation with gross revenues of over $4.65 million for the calendar year ending December 31, 2004. Caldwell and the Watermans are the sole shareholders of CTI. This arrangement will continue after approval and closing of this transaction. Caldwell and the Watermans will become officers and directors of CTI and People's Choice, and accordingly will control both companies.

People's Choice is a Colorado corporation with gross revenue of over $5.3 million for the calendar year ending December 31, 2004. In addition to its federal authorities, People's Choice also holds authorities issued by the Colorado Public Utility Commission. Lah is currently the sole shareholder of People's Choice; however, upon approval and closing, CTI will become the sole owner. Due to the terms of People's Choice Chapter 11 Bankruptcy Reorganization Plan, all of its authorities will continue to be owned by People's Choice, as a separate entity. However, CTI will lease those and other assets from People's Choice under a 5-year lease agreement. After Board approval and closing, CTI and Caldwell and the Watermans will execute shareholder voting agreements that will elect Lah to the board of directors of CTI and People's Choice, subject to certain conditions, until obligations of People's Choice to certain third parties that are guaranteed by Lah have been either paid in full or Lah has been released from liability for such obligations. While Lah

is a member of the boards of directors of CTI and People's Choice, she will have certain veto rights.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

CTI has submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). CTI states that the proposed transaction will have no impact on the adequacy of transportation services available to the public, that fixed charges associated with the proposed transaction will not be adversely impacted and that the interests of employees of People's Choice will not be adversely impacted. Additional information, including a copy of the application, may be obtained from CTI's representative.

On the basis of the application, we find that the proposed acquisition of control and lease of operating authority is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective August 22, 2005, unless timely comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: June 30, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–13438 Filed 7–7–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 29, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 8, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1139.

Regulation Project Number: PS–264–82 Final.

Type of Review: Extension.

Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders.

Description: The regulations provide the procedures and the statements to be filed by S corporations for making the election provided under section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filled will be used to verify that taxpayers are complying with the requirements imposed by Congress.

Respondents: Business and other for-profit, Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Respondent: 6 minutes.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 1545–1491.

Regulation Project Number: REG–209798–95 Final.

Type of Review: Extension.

Title: Amortizable Bond Premium.

Description: The information requested is necessary for the Service to determine whether a holder of a bond has elected to amortize bond premium and to determine whether an issuer or a holder has changed its method of accounting for premium.

Respondents: Individuals or households. Business and other for-profit.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Respondent: 29 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 7,500 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–13440 Filed 7–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 30, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 8, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0014.

Form Number: IRS Form 637.

Type of Review: Extension.

Title: Application for Registration for Certain Excise Tax Activities.

Description: Form 637 is used to apply for excise tax registration. The registration applies to be registered under Internal Revenue Code (IRC) section 4101 for purposes of the federal excise tax on taxable fuel imposed by IRC 4041 and 4081; and to certain manufacturers or sellers and purchasers that must register under IRC 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for exemption. Taxable fuel producers are required by IRC 4101 to register with the Service before incurring any tax liability.

Respondents: Business and other for-profit, not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—10 hr., 17 min.
Learning about the law or the form—1 hr., 41 min.
Preparing and sending the form to the IRS—1 hr., 56 min.

Frequency of Response: Other (one time only).

Estimated Total Reporting/ Recordkeeping Burden: 27,800 hours.

OMB Number: 1545–0024.

Form Number: IRS Form 843.

Type of Review: Extension.

Title: Claim for Refund and Request for Abatement.

Description: Internal Revenue Code (IRC) 6402, 6404, and sections 301.6404–2, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain action by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Respondents: Individuals or households. Business and other for-profit, not-for-profit institutions, farms, State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 545,500.

Estimated Burden Hours Respondent/ Recordkeepers:

Recordkeeping—26 min.
Learning about the law or the form—7 min.
Preparing the form—20 min.
Copying, assembling, and sending the form to the IRS—28 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 916,440 hours.

OMB Number: 1545–0087.

Form Numbers: IRS Forms 1040–ES, 1040–ES(E), 1040–ES(NR), and 1040–ES(Espanol).

Type of Review: Extension.

Title: 1040–ES and 104–ES(E): Estimated Tax for Individuals; 1040–ES(NR): U.S. Estimated Tax for Nonresident Alien Individuals; 1040–ES(Espanol): Contricuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre El Empleo de Empleados Domesticos—Puerto Rico.

Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $1,000 or more. IRS uses the data to credit taxpayers' accounts and to determine if estimated tax has been properly computed and timely paid. Form 1040–ES(E) does not include paper payment vouchers or return envelopes, it is sent to people who pay their estimated tax by an electronic payment method.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 14,563,250.

Estimated Burden Hours Respondent/ Recordkeeper:

Form	Recordkeeping (minutes)	Learning about the law or the form (minutes)	Preparing the form (minutes)	Copying, assembling, and sending the form to the IRS (minutes)
1040ES	52	28	48	10
1040ES(E)	26	18	37	20
1040ES(NR)	39	18	49	10
1040ES(ESP)	6	17	30	10
Worksheet	26	18	37	0

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 94,471,282 hours.

OMB Number: 1545–0119.

Form Number: IRS Form 1099–R.

Type of Review: Extension.

Title: Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Description: Form 1099–R is used to report distributions from pensions, annuities , profit-sharing or retirement plans, IRAs, and the surrender or insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.

Respondents: Business and other for-profit, not-for-profit institutions, Federal Government, State, local or tribal government.

Estimated Number of Respondents: 350,000.

Estimated Burden Hours Respondent: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 18,704,546 hours.

OMB Number: 1545–0227.

Form Number: IRS Form 6251.

Type of Review: Extension.

Title: Alternative Minimum Tax—Individuals.

Description: Form 6251 is used by individuals with adjustments, tax preference items, taxable income above certain exemption amounts, or certain credits. Form 6251 computes the alternative minimum tax which is added to regular tax. The information is needed to ensure that the taxpayer is complying with the law.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 4,236,740.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—19 min.
Learning about the law or the form—1 hr., 16 min.
Preparing the form—1 hr., 44 min.
Copying, assembling, and sending the form to the IRS—34 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 16,016,997 hours.

OMB Number: 1545–0351.

Form Number: IRS Form 3975.

Type of Review: Extension.

Title: Tax Professionals Annual Mailing List Application and Order Blank

Description: Form 3975 allows a tax professional a systematic way to remain on the Tax Professionals Mailing File and to order copies of tax materials.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 320,000.

Estimated Burden Hours Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 16,000 hours.

OMB Number: 1545–0748.

Form Number: IRS Form 2678.

Type of Review: Extension.

Title: Employer Appointment of Agent.

Description: 26 U.S.C. 3504 authorizes an employer to designate a fiduciary, agent, etc., to perform the same acts as required of employers for purposes of employment taxes.

Respondents: Business and other for-profit, not-for-profit institutions, farms, Federal Government.

Estimated Number of Respondents: 95,200.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of Response: Other (as necessary).

Estimated Total Reporting Burden: 47,600 hours.

OMB Number: 1545–0795.

Form Number: IRS Form 8233.

Type of Review: Extension.

Title: Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

Description: Compensation paid to nonresident alien (NRA) individual for independent personal services (self-employment) is generally subject to 30% withholding or graduated rates. However, compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption amount. Form 8233 is used to request exemption from withholding.

Respondents: Individuals or households, business and other for-profit, not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 480,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—1 hr., 5 min.

Learning about the law or the form—31 min.

Preparing and sending the form to the IRS—57 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,320,000 hours.

OMB Number: 1545–0819.

CFR Number: 26 CFR 601.201.

Type of Review: Extension.

Title: Instructions for Requesting Rulings and Determination Letters.

Description: The National Office issues ruling letters and District Directors issue determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The National Office also issues other types of letters. The procedural regulations set forth instructions for requesting ruling and determination letters.

Respondents: Business and other for-profit, individuals or households, not-for-profit institutions, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 271,914.

Estimated Burden Hours Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 248,496 hours.

OMB Number: 1545–1126.

Regulation Project Number: INTL–121–90, INTL–292–90, and INTL–361–89 Final.

Type of Review: Extension.

Title: Treaty-Based Return Positions.

Description: Regulation section 301.6114–1 sets forth the reporting requirement under section 6114. Persons or entities subject to this reporting requirement must make the required disclosure on a statement attached to their return, in the manner set forth, or be subject to a penalty. Regulation section 301.7701(b)–7(a)(4)(iv)(C) sets forth the reporting requirement for dual resident S corporation shareholders who claim treaty benefits as nonresidents of the United States.

Respondents: Individuals or households, business and other for-profit.

Estimated Number of Respondents: 6,020.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,015 hours.

OMB Number: 1545–1407.

Form Number: IRS Form 8848.

Type of Review: Extension.

Title: Consent to Extend the Time to Assess the Branch Profits Tax under Regulations Sections 1.884–2(a) and (c).

Description: Form 8848 is used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of Temporary regulations section 1.884–2T(a) during the tax year or (b) transferred their U.S. assets to a domestic corporation in a transaction described in Code section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Respondents: Business and other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—3 hr., 35 min.

Learning about the law or the form—1 hr.

Preparing and sending the form to the IRS—1 hr., 6 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 22,500 hours.

OMB Number: 1545–1591.

Regulation Project Number: REG–251701–96 Final.

Type of Review: Extension.

Title: Electing Small Business Trusts.

Description: This regulation provides the time and manner for making the Electing Small Business Trust election pursuant to section 1361(e)(3).

Respondents: Business and other for-profit.

Estimated Number of Respondents: 7,500.

Estimated Burden Hours Respondent: 1 hour.

Frequency of Response: Other (once)..

Estimated Total Reporting Burden: 7,500 hours.

OMB Number: 1545–1644.

Regulation Project Number: REG–126024–01 NPRM.

Type of Review: Extension.

Title: Reporting of Gross Proceeds Payment to Attorneys.

Description: Information is required to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used by the IRS to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly.

Respondents: Business and other for-profit, not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1648.

Publication Number: Publication 3319.

Type of Review: Extension.

Title: Low-Income Tax-Payer Clinics—2005 Grant Application Package and Guidelines.

Description: Publication 3319 outlines requirements of the IRS Low-Income Taxpayer Clinics (LITC) program and provides instructions on how to apply for a LITC grant award.

Respondents: Not-for-profit institution.

Estimated Number of Respondents/ Recordkeepers: 825.

Estimated Burden Hours Respondent/ Recordkeeper:

For Program Sponsors: 60 hours.

For Student and Program Participants: 2 hours.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 6,000 hours.

OMB Number: 1545–1654.

Regulation Project Number: REG–106527–98 Final.

Type of Review: Extension.

Title: Capital Gains, Partnership and Subchapter S, and Trust Provisions.

Description: Section 1(h) requires that transferors recognize collectibles gain when an interest in an S corporation, trust, or a partnership holding property with collectibles gain is sold or exchanged and that partners take section 1250 capital gain in the partnership property into account when an interest in the partnership is sold or exchanged. These regulations provide guidance.

Respondents: Business and other for-profit, individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1779.

Notice Number: Notice 2002–27.

Type of Review: Extension.

Title: IRA Required Minimum Distribution Reporting.

Description: This notice provides guidance with response to the reporting requirements, that is, data that custodians and trustees of IRAs must furnish IRA owners in those instances where there must be a minimum distribution from an individual retirement arrangement.

Respondents: Business and other for-profit, not-for-profit institution.

Estimated Number of Respondents: 78,000.

Estimated Burden Hours Respondent: 15 hours.

Frequency of Response: Other (one per IRA).

Estimated Total Reporting Burden: 1,170,000 hours.

OMB Number: 1545–1784.

Revenue Procedure Number: Revenue Procedure 2002–32.

Type of Review: Extension.

Title: Waiver of 60-Month Bar on Reconsolidation after Disaffiliation.

Description: Pursuant to Section 1504(a)(3)(B) of the Internal Revenue Code, this procedure grants certain taxpayers a waiver of the general rule of § 1504(a)(3)(A) barring a corporation from filing a consolidated return with a group of which it had ceased to be a member for 60 months following the year of disaffiliation.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1795.

Regulation Project Number: REG–165868–01 Final.

Type of Review: Extension.

Title: Ten or More Employer Plan Compliance Information.

Description: Allows the Internal Revenue Service and participating employers to verify that ten-or-more employer welfare benefit plan complies with the requirements of section 419A(f)(6) of the Internal Revenue Code. Respondents are administrators of ten-or-more employer plans.

Respondents: Business and other for-profit, not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Respondent/ Recordkeeper: 25 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1545–1796.

Regulation Project Number: REG–106879–00 Final.

Type of Review: Extension.

Title: Consolidated Loss Recapture Events.

Description: This document contains final regulations under section 1503(d) regarding the events that require recapture of dual consolidated losses. These regulations are issued to facilitate compliance by taxpayers with the dual consolidated loss provisions. The regulations generally provide that certain events will not trigger recapture of a dual consolidated loss or payment of the associated interest charge. The regulations provide for the filing of certain agreements in such cases. This document also makes clarifying and conforming changes to the current regulations.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 60 hours.

OMB Number: 1545–1927.

Form Number: IRS Form 8878–A.

Type of Review: Extension.

Title: IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.

Description: Form 8878–A is used by a corporate officer or agent and an electronic return originator (ERO) to use a personal identification number (PIN) to authorize an electronic funds withdrawal for a tax payment made with a request to extend the filing due date for a corporate income tax return.

Respondents: Business and other for-profit.

Estimated Number of Respondents/ Recordkeeping: 140,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—3 hrs., 21 min.

Learning about the law or the form—6 min.

Preparing the form—9 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 505,400 hours.

OMB Number: 1545–1930.

Regulation Project Number: REG–159243–03 NPRM and Temporary.

Type of Review: Extension.

Title: Residence and Source Rules Involving U.S. Possessions and Other Conforming Changes.

Description: The regulations provide rules for determining whether an individual is a bona fide resident of a U.S. possession and whether income is derived from sources in a possession or effectively connected with the conduct of a trade or business in a possession.

Respondents: Individuals or households, business and other for-profit.

Estimated Number of Respondents/ Recordkeepers: 50,000.

Estimated Burden Hours Respondent/ Recordkeeper: 1 hour, 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–13441 Filed 7–7–05; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Departmental Offices; Renewal of the Treasury Borrowing Committee of the Bond Market Association

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (Pub. L. 92–463; 5 U.S.C. App. 2) with the concurrence of the General Services Administration, the Secretary of the Treasury has determined that renewal of the Treasury Borrowing Advisory Committee of The Bond Market Association (the "Committee") is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Treasury by law.

EFFECTIVE DATE: July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Jeff Huther, Director, Office of Debt Management (202) 622–2630.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Treasury responsibilities for federal financing and public debt management.

The Committee meets to consider special items on which its advice is sought pertaining to immediate Treasury funding requirements and pertaining to longer term approaches to manage the national debt in a cost-effective manner. The Committee usually meets immediately before the Treasury announces each mid-calendar quarter funding operation, although special meetings also may be held.

Membership consists of 15–20 individuals who are experts in the government securities market and who are involved in senior positions in debt markets as institutional investors, investment advisors, or as dealers in government securities.

The Designated Federal Official for the Advisory Committee is the Director of the Office of Debt Management, reporting through the Assistant Secretary for Financial Markets. The Treasury Department filed copies of the Committee's renewal charter with appropriate committees in Congress.

Dated: June 30, 2005.

Timothy Bitsberger,

Assistant Secretary, Financial Markets.

[FR Doc. 05–13410 Filed 7–7–05; 8:45 am]

BILLING CODE 4811–15–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th and Pennsylvania Avenue, NW., Washington, DC, on August 2, 2005, at 11:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Bond Market Association ("Committee").

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee of the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. This, the meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). the Designated Federal Officer or other responsible agency official who may be contacted for additional information is Jeff Huther, Director, Office of Debt Management, at (202) 622–1868.

Dated: June 30, 2005.

Timothy Bitsberger,

Assistant Secretary, Financial Markets.

[FR Doc. 05–13409 Filed 7–7–05; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A and Schedules 1, 2, and 3, and Form 1040EZ, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2, and 3; Form 1040EZ;

and all attachments to these forms (see the Appendix to this notice). With this notice, the IRS is also announcing significant changes to (1) the manner in which tax forms used by individual taxpayers will be approved under the PRA and (2) its method of estimating the paperwork burden imposed on all individual taxpayers.

DATES: Written comments should be received on or before September 6, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to The OMB Unit, SE:W:CAR:MP:T:T:SP, Internal Revenue Service, Room 6406, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Chief, RAS:R:TSBR, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *ChiefTSBR@irs.gov*.

SUPPLEMENTARY INFORMATION:

Change in PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. A single information collection may consist of one or more forms, recordkeeping requirements, and/or third-party disclosure requirements. Under the PRA and OMB regulations, agencies have the discretion to seek separate OMB approvals for individual forms, recordkeeping requirements, and third-party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number. Agency decisions on whether to group individual requirements under a single OMB Control Number or to disaggregate them and request separate OMB Control Numbers are based largely on considerations of administrative practicality.

The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) in OMB's database of approved information collections. If more than one form, recordkeeping requirement, and/or third-party disclosure requirement is approved under a single control number, then the burden estimate for that control number reflects the burden associated with all of the approved forms, recordkeeping requirements, and/or third-party disclosure requirements.

As described below under the heading "New Burden Model," the IRS" new Individual Taxpayer Burden Model (ITBM) estimates of taxpayer burden are based on taxpayer characteristics and activities, taking into account, among other things, the forms and schedules generally used by those groups of individual taxpayers and the recordkeeping and other activities needed to complete those forms. The ITBM represents the first phase of a long-term effort to improve the ability of IRS to measure the burden imposed on various groups of taxpayers by the Federal tax system. While the new methodology provides a more accurate and comprehensive description of individual taxpayer burden, it does not estimate burden on a form-by-form basis, as has been done under the previous methodology. When the prior model was developed in the mid-1980s, almost all tax returns were prepared manually, either by the taxpayer or a paid provider. In this context, it was determined that estimating burden on a form-by-form basis was an appropriate methodology. Today, about 85 percent of all individual tax returns are prepared utilizing computer software (either by the taxpayer or a paid provider), and about 15 percent are prepared manually. In this environment, in which many taxpayers' activities are no longer as directly associated with particular forms, estimating burden on a form-by-form basis is not an appropriate measurement of taxpayer burden. The new model, which takes into account broader and more comprehensive taxpayer characteristics and activities, provides a much more accurate and useful estimate of taxpayer burden.

Currently, there are 121 forms used by individual taxpayers. These include Forms 1040, 1040A, 1040 EZ, and their schedules and all the forms individual taxpayers attach to their tax returns (see the Appendix to this notice). For most of these forms, IRS has in the past obtained separate OMB approvals under unique OMB Control Numbers and separate burden estimates.

Since the ITBM does not estimate burden on a form-by-form basis, IRS is no longer able to provide burden estimates for each tax form used by individuals. The ITBM estimates the aggregate burden imposed on individual taxpayers, based upon their tax-related characteristics and activities. IRS therefore will seek OMB approval of all 121 individual tax forms as a single "collection of information." The aggregate burden of these tax forms will be accounted for under OMB Control Number 1545–0074, which is currently assigned to Form 1040 and its schedules. OMB Control Number 1545–0074 will be displayed on all individual tax forms and other information collections. As a result of this change, burden estimates for individual taxpayers will now be displayed differently in PRA Notices on tax forms and other information collections, and in Federal Register notices. This new way of displaying burden is presented below under the heading "Proposed PRA Submission to OMB." Since 74 of the 121 forms used by individual taxpayers are also used by corporations, partnerships, and other kinds of taxpayers, there will be a transition period during which IRS will report different burden estimates for individual taxpayers and for other taxpayers using the same forms. For those forms used by both individual and other taxpayers, IRS will display two OMB Control Numbers (1545–0074 and the OMB Control Numbers currently assigned to these forms) and provide two burden estimates. The burden estimates for individual taxpayers will be reported and accounted for as described in this notice. The burden estimates for other users of these forms will be determined under existing methodology based on form length and complexity.

New Burden Model

Data from the new ITBM revises the estimates of the levels of burden experienced by individual taxpayers when complying with the Federal tax laws. It replaces the earlier burden measurement developed in the mid-1980s. Since that time, improved technology and modeling sophistication have enabled the IRS to improve the burden estimates. The new model provides taxpayers and the IRS with a more comprehensive understanding of the current levels of taxpayer burden. It reflects major changes over the past two decades in the way taxpayers prepare and file their returns. The new ITBM also represents a substantial step forward in the IRS' ability to assess likely impacts of administrative and legislative changes on individual taxpayers.

The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers

rather than the forms they use.[1] Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return (*e.g.*, with software or paid preparer) and the taxpayer's activities, such as recordkeeping and tax planning. In contrast, the previous estimates primarily focused on the length and complexity of each tax form. The changes between the old and new burden estimates are due to the improved ability of the new methodology to measure burden and the expanded scope of what is measured. These changes create a one-time shift in the estimate of burden levels that reflects the better measurement of the new model. The differences in estimates between the models do not reflect any change in the actual burden experienced by taxpayers. Comparisons should not be made between these and the earlier published estimates, because the models measure burden in different ways.

Methodology

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with the Federal tax system. For the first time, the time expended and the out-of-pocket costs are estimated separately. The new methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer, filing methods, and income levels. Indicators of complexity in tax laws as reflected in tax forms and instructions are incorporated in the model.

The new model follows IRS' classification of taxpayer types: individual taxpayers are taxpayers who file any type of Form 1040. "Self-Employed" taxpayers are individual taxpayers who file a Form 1040 and a Schedule C, C–EZ, E, or F, or Form 2106. All other individual taxpayers using a Form 1040 are "Wage and Investment" taxpayers. The taxpayer's choice of preparation method is identified as a major factor influencing burden levels. The preparation methods are:

- Self-prepared without software
- Self-prepared with software
- Used a paid tax preparer

The separate types of taxpayer activities measured in the model are:

- Recordkeeping
- Form completion
- Form submission (electronic and paper)
- Tax planning
- Use of services (IRS and paid professional)
- Gathering tax materials

Taxpayer Burden Estimates

Tables 1, 2, and 3 show the burden model estimates. In tax year 2003 the burden of all individual taxpayers filing Forms 1040, 1040A or 1040EZ averaged about 23 hours per return filed, or a total of more than 3 billion hours. Similarly, the average out-of-pocket taxpayer costs were estimated to be $179 per return filed or a total of $23.4 billion. Including associated forms and schedules, taxpayers filing Form 1040 had an average burden of about 30 hours, taxpayers filing Form 1040A averaged about 9 hours, and those filing 1040 EZ averaged about 7 hours.

The data shown are the best estimates from tax returns filed for 2003 currently available as of June 27, 2005. The estimates are subject to change as new forms and data become available. Estimates for combinations of major forms and schedules commonly used will be available and the most up-to-date estimates and supplementary information can be found on the IRS Web site: *http://www.irs.gov.*

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2 and 3; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to the forms and the method of burden computation.

Type of Review: Extension of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 130,200,000.

Total Estimated Time: 3.0 billion hours.

Estimated Time Per Respondent: 23.3 hours.

Total Estimated Out-of-Pocket Costs: $23.4 billion.

Estimated Out-of-Pocket Cost Per Respondent: $179.

TABLE 1.—TAXPAYER BURDEN FOR INDIVIDUAL TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD

Major form filed or type of taxpayer	Number of returns (millions)	Average burden							
		Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
		Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)
All Taxpayers Filing Form 1040, 1040A and 1040EZ	130.2	23.3	$179	16.4	$17	27.9	$44	22.9	$268
Major Form Filed:									
Taxpayers Filing Form 1040 (and associated forms)	88.2	30.5	242	26.9	$21	36.6	52	28.7	338
Taxpayers Filing Form 1040A (and associated forms)	23.3	9.1	62	10.8	29	11.5	44	7.4	82
Taxpayers Filing Form 1040EZ	18.7	7.2	29	7.0	1	10.1	9	5.5	60
Type of Taxpayer:*									
Wage and Investment	94.6	11.8	93	11.5	14	17.8	35	9.0	142
Self-Employed	35.6	53.9	410	48.5	31	68.4	81	53.9	522

Note: Detail may not add to total due to rounding.

*You are a "Wage and Investment" taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a "Self-Employed" taxpayer.

[1] As IRS continues to develop the new burden model, the new method of estimating burden will be expanded to cover other groups of taxpayers (corporations, partnerships, tax-exempt entities, etc.).

TABLE 2.—TAXPAYER BURDEN FOR TAXPAYERS WHO FILED FORM 1040, BY PREPARATION METHOD

Type of taxpayer* and common combinations of forms filed	Average burden							
	Average for all preparation methods		Self-prepared without tax software		Self-prepared with tax software		Prepared by paid professional	
	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)	Hours	Costs (dollars)
Common Filing Combinations of Wage & Investment Taxpayers								
Wage and Investment Taxpayers	11.8	$93	11.5	$14	17.8	$35	9.0	$142
Form 1040 and other forms and schedules, but not Schedules A and D	9.2	88	12.2	17	15.8	34	6.6	118
Form 1040 and Schedule A and other forms and schedules, but not Schedule D	16.3	126	19.2	17	22.6	41	11.9	198
Form 1040 and Schedule D and other forms and schedules, but not Schedule A	17.6	159	22.5	14	27.3	48	12.9	223
Form 1040 and Schedules A and D and other forms and schedules	24.6	239	32.8	13	35.4	44	18.1	365
Common Filing Combinations of Self-Employed Taxpayers								
Self-Employed Taxpayers	53.9	$410	48.5	$31	68.4	$81	53.9	$522
Form 1040 and Schedule C and other forms and schedules, but not Schedules E or F or Form 2106	59.4	245	51.4	24	74.6	63	56.1	323
Form 1040 and Schedule E and other forms and schedules, but not Schedules C or F or Form 2106	44.7	591	37.5	43	57.7	100	42.8	717
Form 1040 and Schedule F and other forms and schedules, but not Schedules C or E or Form 2106	34.8	238	38.1	37	49.7	81	34.8	238
Form 1040 and Form 2106 and other forms and schedules but not Schedules C, E, or F	55.4	242	42.0	32	62.5	80	55.8	283
Form 1040 and forms and schedules including more than one of the SE forms (Schedules C, E, or F or Form 2106)	69.4	618	72.0	40	88.3	99	65.7	746

*You are a "Wage and Investment" taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a "Self-Employed" taxpayer.

TABLE 3.—TAXPAYER BURDEN FOR TAXPAYERS WHO FILED FORM 1040, BY ACTIVITY

Form or schedule	Percent of returns filed (percent)	Average time burden of taxpayer activities (hours per return)					Average costs per return (dollars)
		Total time	Record-keeping	Tax planning	Form completion	All other activities	
All Taxpayers	100%	23.3	14.1	3.2	3.2	2.8	$179
Form 1040	68	30.5	19.1	4.2	3.8	3.5	242
Form 1040A	18	9.1	4.3	1.1	1.9	1.8	63
Form 1040EZ	14	7.2	2.5	1.5	2.1	1.2	29
Type of Taxpayer*	100						
Wage and Investment	73	11.8	5.0	2.3	2.7	1.8	93
Self-Employed	27	53.9	38.1	5.8	4.4	1.2	410

Note: Detail may not add to total due to rounding.
*You are a "Wage and Investment" taxpayer (as defined by IRS) if you did not file a Schedule C, Schedule C–EZ, Schedule E, Schedule F, or Form 2106. If you filed a Schedule C, Schedule C–EZ, E, or F, or Form 2106, you are a "Self-Employed taxpayer."

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 6, 2005.

R. Joseph Durbala,

Acting IRS Reports Clearance Officer.

Appendix

OMB No.	Form	Title
0028	926	Return by a U.S. Transferor of Property to a Foreign Corporation.
0043	970	Application To Use LIFO Inventory Method.
0047	982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment.
0074	1040 (SCH A)	Itemized Deductions.
0074	1040 (SCH B)	Interest and Ordinary Dividends.
0074	1040 (SCH C)	Profit or Loss From Business.
0074	1040 (SCH D)	Capital Gains and Losses.
0074	1040 (SCH E)	Supplemental Income and Loss.
0074	1040 (SCH F)	Profit or Loss From Farming.
0074	1040 (SCH R)	Credit for the Elderly or the Disabled.
0074	1040 (SCH SE)	Self-Employment Tax.
0074	1040 (SCH J)	Income Averaging for Farmers and Fishermen.
0074	1040 (SCH EIC)	Earned Income Credit.
0074	1040 (SCH H)	Household Employment Taxes.
0074	1040 (SCH D–1)	Continuation Sheet for Schedule D.
0074	1040 (SCH C–EZ)	Net Profit From Business.
0121	1116	Foreign Tax Credit.
0134	1128	Application To Adopt, Change, or Retain a Tax Year.
0073	1310	Statement of Person Claiming Refund Due a Deceased Taxpayer.
0139	2106	Employee Business Expenses.
1441	2106 EZ	Unreimbursed Employee Business Expenses.
0071	2120	Multiple Support Declaration.
0140	2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
0140	2210 F	Underpayment of Estimated Tax by Farmers and Fishermen.
0070	2350	Application for Extension of Time To File U.S. Income Tax Return.
0145	2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
0068	2441	Child and Dependent Care Expenses.
0067	2555	Foreign Earned Income.
1326	2555 EZ	Foreign Earned Income Exclusion.
0152	3115	Application for Change in Accounting Method.
0155	3468	Investment Credit.
0159	3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
0895	3800	General Business Credit.
0062	3903	Moving Expenses.
0162	4136	Credit for Federal Tax Paid on Fuels.
0059	4137	Social Security and Medicare Tax on Unreported Tip Income.
0166	4255	Recapture of Investment Credit.
0172	4562	Depreciation and Amortization.
0173	4563	Exclusion of Income for Bona Fide Residents of American Samoa.
0177	4684	Casualties and Thefts.
0184	4797	Sales of Business Property.
0187	4835	Farm Rental Income and Expenses.
0191	4952	Investment Interest Expense Deduction.
0192	4970	Tax on Accumulation Distribution of Trusts.
0193	4972	Tax on Lump-Sum Distributions.
0803	5074	Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
0203	5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
0704	5471	Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
0216	5713	International Boycott Report.
0219	5884	Work Opportunity Credit.
0712	6198	At-Risk Limitations.
0227	6251	Alternative Minimum Tax—Individuals.
0228	6252	Installment Sale Income.
0231	6478	Credit for Alcohol Used as Fuel.
0619	6765	Credit for Increasing Research Activities.
0644	6781	Gains and Losses From Section 1256 Contracts and Straddles.
0790	8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
0881	8271	Investor Reporting of Tax Shelter Registration Number.
0889	8275	Disclosure Statement.
0889	8275 R	Regulation Disclosure Statement.
0908	8283	Noncash Charitable Contributions.
0915	8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.
1210	8379	Injured Spouse Claim and Allocation.
0930	8396	Mortgage Interest Credit.
1008	8582	Passive Activity Loss Limitations.
1034	8582 CR	Passive Activity Credit Limitations.
0984	8586	Low-Income Housing Credit.
1021	8594	Asset Acquisition Statement.

OMB No.	Form	Title
1007	8606	Nondeductible IRAs.
0988	8609 (SCH A)	Annual Statement.
1035	8611	Recapture of Low-Income Housing Credit.
0998	8615	Tax for Children Under Age 14 With Investment Income of More Than $1,600.
1002	8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
1032	8689	Allocation of Individual Income Tax to the Virgin Islands.
1031	8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
1073	8801	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
1620	8812	Additional Child Tax Credit.
1128	8814	Parents' Election to Report Child's Interest and Dividends.
1173	8815	Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
1505	8820	Orphan Drug Credit.
1190	8824	Like-Kind Exchanges.
1205	8826	Disabled Access Credit.
1288	8828	Recapture of Federal Mortgage Subsidy.
1266	8829	Expenses for Business Use of Your Home.
1282	8830	Enhanced Oil Recovery Credit.
1374	8834	Qualified Electric Vehicle Credit.
1362	8835	Renewable Electricity and Refined Coal Production Credit.
1829	8836	Qualifying Children Residency Statement.
1552	8839	Qualified Adoption Expenses.
1410	8840	Closer Connection Exception Statement for Aliens.
1411	8843	Statement for Exempt Individuals and Individuals With a Medical Condition.
1444	8844	Empowerment Zone and Renewal Community Employment Credit.
1417	8845	Indian Employment Credit.
1414	8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
1416	8847	Credit for Contributions to Selected Community Development Corporations.
1561	8853	Archer MSAs and Long-Term Care Insurance Contracts.
1567	8854	Initial and Annual Expatriation Information Statement.
1910	8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
1584	8859	District of Columbia First-Time Homebuyer Credit.
1606	8860	Qualified Zone Academy Bond Credit.
1569	8861	Welfare-to-Work Credit.
1619	8862	Information To Claim Earned Income Credit After Disallowance.
1618	8863	Education Credits.
1924	8864	Biodiesel Fuels Credit.
1668	8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
1622	8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
1722	8873	Extraterritorial Income Exclusion.
1804	8874	New Markets Credit.
1805	8880	Credit for Qualified Retirement Savings Contributions.
1810	8881	Credit for Small Employer Pension Plan Startup Costs.
1809	8882	Credit for Employer-Provided Childcare Facilities and Services.
1807	8885	Health Coverage Tax Credit.
1800	8886	Reportable Transaction Disclosure Statement.
1911	8889	Health Savings Accounts (HSAs).
1928	8891	U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
1914	8896	Low Sulfur Diesel Fuel Production Credit.
NEW	8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possesion.
NEW	8900	Qualified Railroad Track Maintenance Credit.
NEW	8903	Domestic Production Activities Deduction.
NEW	8904	Marginal Wells Oil and Gas Production Credit.
0007	T (Timber)	Forest Activities Schedules.

[FR Doc. 05–13593 Filed 7–7–05; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Electronic Operations

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 8, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition,

interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Electronic Operations.

OMB Number: 1550–0095.

Form Number: N/A.

Regulation Requirement: 12 CFR part 555.

Description: This information collection requires a savings association to notify OTS before establishing a transactional Web site. The notice is needed to evaluate a savings association's risks in the use of information technology so that any safety and soundness concerns may be addressed in a timely manner.

Type of Review: Reinstatement.

Affected Public: Savings Associations.

Estimated Number of Respondents: 80.

Estimated Burden per Response: 2 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 160 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–13398 Filed 7–7–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Bylaw Amendments

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 8, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Bylaw Amendments.

OMB Number: 1550–0095.

Form Number: N/A.

Regulation requirement: 12 CFR parts 544 and 552.

Description: 12 CFR parts 544 and 552 require federally chartered savings associations to obtain agency approval of any change in its bylaws that is not preapproved by regulation.

Type of Review: Reinstatement.

Affected Public: Savings Associations.

Estimated Number of Respondents: 17.

Estimated Burden per Response: 8.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 136 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–13399 Filed 7–7–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Management Official Interlocks

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 8, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202)

906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Management Official Interlocks.

OMB Number: 1550–0051.

Form Number: N/A.

Regulation requirement: 12 CFR part 563f.

Description: OTS requires information to evaluate the merits of interlocks exemption applications. 12 CFR part 563f sets forth several interlocking relationships that are prohibited. Generally, a management official of a depository institution or depository holding company may not serve as a management official of an unaffiliated depository institution or depository holding company if the entities in question (or a depository institution affiliate thereof) have offices in the same community or metropolitan statistical area or are of a certain asset size. Notwithstanding these general prohibitions, § 563f.4 provides that prohibited interlocking relationships will not apply in certain circumstances.

Type of Review: Reinstatement.

Affected Public: Savings Associations.

Estimated Number of Respondents: 3.

Estimated Burden per Response: 4 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 12 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–13403 Filed 7–7–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Application Processing Fees

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 8, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Application Processing Fees.

OMB Number: 1550–0053.

Form Number: N/A.

Regulation requirement: 12 CFR 502.5 and 502.70.

Description: Pursuant to section 9 of the HOLA, 12 U.S.C. 1467, the Director of the Office of Thrift Supervision ("OTS") is authorized to charge assessments to recover the costs of examining savings associations and their affiliates, to charge fees to recover the costs of processing applications and other filings, and to charge fees to cover OTS's direct and indirect expenses in regulating savings associations and their affiliates.

An institution must submit a fee with certain applications, including Securities and Exchange Act of 1934 filings, notices, and requests (hereafter collectively referred to as "applications"), before such applications will be accepted for processing by OTS. 12 CFR 502.5. The institution is required to state how it calculates the appropriate fee, in accordance with OTS's schedule. 12 CFR 502.70.

Type of Review: Reinstatement.

Affected Public: Savings Associations.

Estimated Number of Respondents: 2,102.

Estimated Burden per Response: .036 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 76 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–13404 Filed 7–7–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Capital Distributions

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 8, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Capital Distribution.

OMB Number: 1550–0059.

Form Number: 1583.

Regulation requirement: 12 CFR 563.143.

Description: This information collection provides uniform treatment for capital distributions made by savings associations held by holding companies, and ensures adequate supervision of distribution of capital by those savings associations, thereby fostering safety and soundness of the thrift industry.

Type of Review: Reinstatement.

Affected Public: Savings Associations.

Estimated Number of Respondents: 475 (Standard—83; Expedited—392).

Estimated Burden per Response: Standard—4 hours; Expedited—.275 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 440 hours (Standard—332; Expedited—108).

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 30, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–13405 Filed 7–7–05; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 70, No. 130
Friday, July 8, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Adminstration

14 CFR Part 39

[Docket No. FAA–2005–21433; Directorate Identifier 2005–NM–079–AD; Amendment 39–14123; AD 2005–12–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

Correction

In rule document 05–11707 beginning on page 34636 in the issue of Wednesday, June 15, 2005, make the following correction:

§ 39.13 [Corrected]

On page 34637, in the third column, in § 39.13, after amendatory instruction 2, in the fourth and fifth lines, delete "(b) None.".

[FR Doc. C5–11707 Filed 7–7–05; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
July 8, 2005

Part II

Corporation for National and Community Service

45 CFR Parts 2510, 2520, 2521, etc.
AmeriCorps National Service Program; Final Rule

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2520, 2521, 2522, 2540 and 2550

RIN 3045–AA41

AmeriCorps National Service Program

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") is amending several provisions relating to the AmeriCorps national service program, and adding rules to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements.

DATES: This final rule is effective September 6, 2005, with specific sections becoming applicable according to the implementation schedule in part VII of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Associate Director for Policy, Department of AmeriCorps, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525, (202) 606–5000, ext. 132. T.D.D. (202) 606–3472. Persons with visual impairments may request this rule in an alternative format.

SUPPLEMENTARY INFORMATION:

List of Topics

I. Background

Under the National and Community Service Act of 1990, as amended (hereinafter "NCSA, or the Act," 42 U.S.C. 12501 *et seq.*), the Corporation makes grants to support community service through the AmeriCorps program. In addition, the Corporation, through the National Service Trust, provides education awards to, and certain interest payments on behalf of, AmeriCorps participants who successfully complete a term of service in an approved national service position.

On February 27, 2004, President Bush issued Executive Order (E.O.) 13331 aimed at making national and community service programs better able to engage Americans in volunteering, more responsive to State and local needs, more accountable and effective, and more accessible to community organizations, including faith-based organizations. The E.O. directed the Corporation to review and modify its policies as necessary to accomplish these goals.

In the Consolidated Appropriations Act for 2004, Congress directed the Corporation to reduce the Federal cost per participant in the AmeriCorps program and to increase the level of matching funds and in-kind contributions provided by the private sector. The Conference Report accompanying the 2004 Consolidated Appropriations Act directed the Corporation to engage in notice and comment rulemaking around the issue of "sustainability."

On September 23, 2003, the Corporation's Board of Directors (the Board) had directed the Corporation to "undertake rulemaking to establish regulations on significant issues, such as sustainability and the limitation on the Federal share of program costs, consistent with any applicable directives from Congress." On August 12, 2004, the Corporation published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** for public comment (69 FR 50124).

This rulemaking process is one of two the Corporation initiated in 2004, and addresses several significant and time-sensitive issues. The Corporation intends to implement these changes over the next year, with some taking effect in the AmeriCorps 2005 program year, and the remainder in the 2006 program year (See section VII. Effective Dates). The second process stemmed from a recommendation by the Board's Taskforce on Grant-making and is largely an effort to streamline and improve our current grant-making processes. That effort is already underway, and we plan to issue a Notice of Proposed Rulemaking for that purpose later this year. The two rulemakings address distinct and separate issues.

II. Preliminary Public Input and Public Comments

A. Preliminary Public Input

On March 4, 2004, the Corporation published a notice in the **Federal Register** inviting informal preliminary public input in advance of rulemaking (69 FR 10188). The notice outlined the general topics the Corporation was interested in addressing through rulemaking and posed questions for the public to consider in providing input. Following the notice, the Corporation held four conference calls and five public meetings across the country in Columbus, Ohio; Seattle, Washington; Boston, Massachusetts; Washington, DC; and Arlington, Texas, to frame the issues and collect public input. Through the hearings, conference calls, and e-mail and paper submissions, the Corporation received comments from nearly 600 individuals and organizations, and used this input to inform the drafting of the proposed rule.

B. 60-Day Comment Period

In the **Federal Register** of August 12, 2004 (69 FR 50122), the Corporation published the proposed rule with a 60-day comment period. In addition to accepting comments in writing, the Corporation held three conference calls and five public meetings across the country in Philadelphia, Pennsylvania; Atlanta, Georgia; Portland, Oregon; Denver, Colorado; and Chicago, Illinois. During the public comment period, the Corporation received 217 written comments and 78 oral comments from grantees, foundations, State governments, non-profits, Members of Congress, and other interested individuals and organizations.

The comments express a wide variety of views on the merits of particular sections of the proposed regulations, as well as some broader policy statements and issues. Acknowledging that there are strong views on, and competing legitimate public policy interests relating to, the issues in this rulemaking, the Corporation has carefully considered all of the comments on the proposed regulations.

The Corporation has summarized below the major comments received on the proposed regulatory changes, and has described the changes we made in the final regulatory text in response to the comments received. In addition to the more substantive comments discussed below, the Corporation received some editorial suggestions, some of which we have adopted and some of which we have not. The Corporation has made a number of other minor editorial changes to better organize or structure the regulatory text. Finally, the Corporation received a number of comments on issues outside the scope of the proposed rule, which the Corporation does not address in the discussion that follows.

III. Terminology Change: FTE to MSY

In the proposed rule, the Corporation defined cost per full-time equivalent (FTE), and referred to cost per FTE throughout the regulation. Until now, the Corporation has used the term FTE to describe the number of service years performed by a full-time AmeriCorps member (each service year being equal to 1,700 hours of service). Because the term FTE is most often associated with budgeting for employee payroll, we are replacing "FTE" with "Member Service Year" (MSY). We think this term more accurately describes units of AmeriCorps service, and we want to avoid any misimpression that AmeriCorps members are Federal employees. Consequently, the Corporation has amended the final rule to refer to cost per MSY, and uses MSY and cost per MSY throughout this final rule in lieu of FTE and cost per FTE, respectively.

IV. Highlights of Final Rule

This final rule includes a targeted series of reforms designed to strengthen the impact, efficiency, and reach of AmeriCorps, our AmeriCorps grantees, and the Corporation. Our primary objectives are to:

- Create a framework for long-term growth and sustainability of the AmeriCorps program as a public-private partnership;
- Provide consistency, reliability, and predictability for AmeriCorps grantees;
- Enhance the measurable positive impact of the AmeriCorps program on:
  - —Communities and beneficiaries that receive service;
  - —Non-profit organizations and community infrastructures that host service; and
  - —AmeriCorps members who serve;
- Resolve longstanding issues relating to Federal share, Corporation cost per member service year (MSY), and sustainability of AmeriCorps projects to minimize uncertainty about annual grantee funding levels and restrictions;
- Assure fiscal and programmatic accountability and effective performance measurement for the Corporation, AmeriCorps, and grantees; and
- Generate additional and wider varieties of grant applicant organizations. In addition, wherever possible, this rule reflects the Corporation's determination to:
- Eliminate unnecessary paperwork burdens on Corporation grantees;
- Strengthen AmeriCorps' ability to respond to State and local needs;
- Engage more community volunteers;
- Include community organizations, including faith-based organizations, in all Corporation programs; and
- Invigorate the competitive grant-making process.

Existing and potential AmeriCorps grantees are a strong and diverse group of talented and innovative forces for change, with different needs, circumstances, and abilities. Therefore, the Corporation has endeavored, throughout these regulations, to:

- Use competitive criteria to foster and encourage, rather than require, desired actions or activities; and
- Tailor implementation of the regulatory requirements based on the unique goals and circumstances of grantees, including limited waivers if appropriate.

The Corporation has focused reforms in the final rule on four main areas: Sustainability of AmeriCorps programs, including decreasing grantee reliance on Federal resources and decreasing Corporation costs per MSY; Grant selection criteria; Performance measures and evaluation; and Tutor qualifications and other requirements for tutoring programs. The proposed rule also included a discussion in some detail of several non-regulatory issues including the Corporation's goal of streamlining continuation applications and adjusting grant cycles. As discussed in the proposed rule, the Corporation is undertaking both those reforms outside of these regulations.

The Corporation is publishing these regulations pursuant to the Chief Executive Officer's statutory authority to "prescribe such rules and regulations as are necessary or appropriate to carry out the national service laws." 42 U.S.C. 12651c(c). The Corporation intends to monitor the impact of this final rule on grantees.

The next section of this preamble, section V, addresses sustainability, and specific issues concerning intermediaries, Education Award Program grantees, and professional corps programs. Section VI includes a section-by-section summary and analysis of the major comments we received and the Corporation's response. Section VII of this preamble addresses implementation of the final rule. Section VIII addresses several non-regulatory policy issues the Corporation considered in light of the public input and comments we received.

V. Broad Policy Issues

A. Sustainability

Many of the comments the Corporation received addressed the issue of sustainability. Many suggested that the Corporation had too narrowly defined sustainability in the proposed rule as only including financial or monetary measures, and had given insufficient consideration to other measures of sustainability, such as community support and partnerships, and program quality. Those commenting on the definition generally suggested various revisions on the same theme of defining sustainability broadly and beyond just financial commitments. Two commenters suggested that sustainability be measured by criteria that capture capacity in terms of program quality and cost structure, fiscal and community support, partnerships, and leveraged resources, including volunteer hours and in-kind goods and services. The Corporation agrees that sustainability includes many elements beyond cost, and has modified the rule language in several places to bring greater emphasis on multiple and diverse measures of sustainability.

The Corporation did not intend for the proposed rule to define sustainability solely in terms of money, nor did we intend for sustainability itself to be viewed as the only factor in the grant selection process. The Corporation's intent was to broadly define sustainability and to specify measures of sustainability in the grant selection criteria and program requirements. At the same time, the Corporation does believe that decreasing the federal share of costs for AmeriCorps programs is essential to sustainability, and we have, thus, retained increased matching requirements as a key part of our effort to boost program sustainability.

As stated in the proposed rule, the Corporation's annual appropriation and its authorizing legislation, as well as E.O. 13331, support this approach to sustainability. In our annual appropriations act each year dating back

to fiscal year 1996, and most recently in the Consolidated Appropriation Act for fiscal year 2005, Congress directed the Corporation to "increase significantly the level of matching funds and in-kind contribution provided by the private sector," and "reduce the total Federal costs per participant in all programs." Section 133(c)(3) of the Act requires the Corporation to include in its selection criteria the sustainability of the national service program, based on evidence such as the existence of strong and broad-based community support for the program, and of multiple funding sources or private funding for the program. Section 130(b)(3) of the Act authorizes the Corporation to ask an organization "re-competing" for funding after a three-year initial grant period to include a "description of the success of the programs in reducing their reliance on Federal funds." In addition, E.O. 13331 directs that "national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments."

While the Corporation is committed to meeting these goals, in our view, they do not require imposing across-the-board limitations on the number of years an organization may receive funds, particularly given the many organizations providing valuable infrastructure and experience that enable national and community service to continue to thrive across the country. At the national level, the Corporation continues to believe it unnecessary to disqualify an organization from receiving Federal funding based on the number of years that organization has received funding. To do so would ultimately result in a loss of some of the strongest organizations with the capacity, infrastructure, and experience to provide high-quality service and deliver results that strengthen and expand national and community service. We do believe, however, that the majority, if not all, of the organizations that receive Corporation funds can and should increase their share of program costs as their programs mature.

Through increased sustainability, the Corporation seeks to expand the national service field and provide new organizations the opportunity to participate in national and community service programs. The Corporation also seeks to strengthen the capacity of existing national and community service programs by promoting an expansion and diversification of their non-Corporation funding sources, and strengthening the competitive framework. At the same time, the Corporation wants to treat grantees fairly and equitably and avoid impairing their independence, operating flexibility, and autonomy.

As described in more detail below, the Corporation's strategy to increase organizational sustainability and expand national and community service has six main elements:

1. Incorporates the broad spectrum of sustainability elements throughout the Corporation's grant selection criteria and program requirements.
2. Increases the emphasis in the selection process on program cost-effectiveness, including using Corporation cost per MSY as one of several measures of cost-effectiveness.
3. Increases, based on a predictable schedule and incremental scale, the grantee share of program costs to a 50 percent overall level by the 10th year in which an organization receives AmeriCorps funding for the same program. Programs in severely economically distressed or rural areas are eligible to apply for permission to meet an alternative match schedule, which would increase their grantee share to a 35 percent overall level by the 10th year in which an organization receives AmeriCorps funding for the same program.
4. Requires State commissions to develop and implement a sustainability approach as part of their oversight function.
5. Targets a percentage of non-continuation AmeriCorps State and national grant funds each year for new applicants.
6. Provides technical support and limited exceptions to organizations that demonstrate hardship in meeting the increasing match requirements.

With the exception of the fourth and fifth elements, which are not included in the regulatory language and which we address immediately hereafter, the individual section discussions that follow in part VI address each of the other elements of sustainability in more detail.

State Commission Sustainability Approaches (§ 2550.80(a)(3) in Proposed Rule)

Part of the Corporation's sustainability strategy is to build upon what some States are already accomplishing in the sustainability arena. The Corporation understands that roughly 25 percent of the State commissions already have written sustainability policies or approaches through which they promote sustainability and encourage new programs in their States. Some States, for example, gradually and predictably reduce their subgrantees' Corporation cost per MSY over 12 years, to allow the commission to invest resources in new programs and encourage on-going programs to develop efficiencies and enhance community support. One State commission requires, among other things, that its subgrantees develop their own sustainability plans and increase the subgrantee share of program operating costs over a seven-year period to 75 percent. Some States, in addition to requiring a small increase in program share of member support costs over a three-year period, actively solicit private donations to use, in part, to help local AmeriCorps programs develop relationships with corporate donors and increase private support. The Corporation praises these efforts and encourages State commissions to consider these and other approaches to promote program sustainability in their States.

In an effort to promote these State sustainability efforts, the proposed rule required each State to describe its sustainability approach in its State-wide service plan.

Several commenters expressed confusion regarding the proposed requirement. One viewed this provision as requiring States to duplicate the new Federal sustainability and matching regulatory requirements. One State commission indicated that it may develop additional sustainability requirements for programs in its State, but did not wish to report those requirements to the Corporation. Another commission supported the development of local sustainability plans for States, but sought clarifying language that would leave room for States to determine sustainability for themselves.

The Corporation supports the efforts that States are making towards sustainability in their respective States. Furthermore, the Corporation notes that State commissions may generally choose to impose more stringent requirements on State subgrantees than the Corporation's requirements. The Corporation's intent in proposing the reporting requirement was to ensure that each State engage in meaningful discussions about how it should manage its portfolio to maximize long-term impact of programs in the State. The Corporation expects State commissions to consider, in developing their sustainability plans, whether they should add any sustainability requirements to the Corporation's minimum requirements, as well as what strategies the State may use to develop capacity and sustainability of projects and service in the State.

The Corporation has now concluded that the State-wide service plan (formerly "unified State plan") is not necessarily the best mechanism for obtaining this information. Rather, the Corporation believes that the most efficient way for commissions to report on their sustainability plans is through their administrative funds application. The Corporation plans to add one or more questions to the administrative application through which States will report their sustainability plan efforts. The Corporation is, therefore, removing from the final rule the requirement that State commissions submit a sustainability plan to the Corporation. Paragraph (a)(3) of section 2550.80 in the proposed rule has been deleted.

Funds Targeted for New Programs

The Corporation anticipates annually targeting a percentage of AmeriCorps funds for grants to new applicants. To give us the ability to manage our nationwide portfolio and ensure the appropriate mix of programs, the Corporation will determine the category of applicants eligible to receive the targeted funds annually and announce it in the relevant funding announcement.

The target amount will vary, rather than be a fixed amount that the Corporation must use for new programs each year. In some years, the Corporation may receive enough high-quality new program applications to meet or even exceed the target, and in other years, if the new program applications are not of sufficient quality to merit funding, the number of new programs funded may be lower than the amount targeted for that purpose. The Corporation will, to the maximum extent possible, announce the amount targeted for new programs prior to the submission deadline.

One commenter agreed with the Corporation's efforts to support new programs, but expressed concern that this support should not lead to replacing high-quality existing programs with new programs. This commenter supported the Corporation setting aside funding for new programs only under limited circumstances, including: (1) A year when "new" funding represents the majority of the funding available for new and recompeting programs; or (2) a year when there is a substantial amount of new funding made available through an increase in appropriations for AmeriCorps grants of 10 percent or more. In addition, the commenter supported grants awarded out of set-aside funds based on the results of a "truly competitive" process.

The Corporation disagrees with this commenter's suggestions. The Corporation will determine the target percentage annually based on the availability of appropriations and the projected number of recompeting applications, and publish this information, including posting it on the Web site at *www.nationalservice.gov*, in advance of the selection process. The Corporation will not, however, tie itself now to the specific parameters the commenter suggests. The Corporation will ensure that the process for selecting new programs is competitive and results in the selection of high-quality proposals, as for all its AmeriCorps grant competitions.

Several commenters did not support targeting funds for new programs. Other commenters noted that competition is the best way to increase the number and diversity of organizations funded over time. The Corporation views targeting funds for new programs as an important incentive for new organizations to consider applying for AmeriCorps funds, when they otherwise might not. The Corporation acknowledges that its legislative requirements can appear daunting to organizations unfamiliar with AmeriCorps or new to national and community service, particularly when competing with existing organizations that have had the opportunity to learn from experience. The Corporation therefore hopes that, by targeting funds for new programs, more new organizations will apply, thereby increasing the likelihood that more new programs will receive funding. The Corporation will award all of its AmeriCorps funds, including those targeted for new programs, through rigorous competition, to ensure that we fund the best possible programs that will demonstrate strong results and help address our communities' unmet needs.

One commenter asked whether the Corporation would announce the amount we would target for new programs before the selection of grantees or prior to the submission deadline. While the Corporation will generally announce the amount of funds we will target for new programs before the submission deadline, in some years, we may not receive our appropriation until close to the application deadline or after applications are due. In that case, the Corporation would announce the amount targeted for new programs as soon as possible after receiving our annual appropriation.

Several commenters asked that the Corporation specify the annual percentage, or at the very least the maximum annual percentage we will target for new programs. The Corporation cannot specify in this rule how much—if any—we will target for new programs each year because the target amount will depend each year on the level of our annual appropriation, as well as the number of continuation programs and the level of their respective grant requests.

One commenter asked whether States would be required to set-aside a percentage of their formula funds for new programs. The Corporation will not require States to set aside or target formula funds for new programs, although a State may choose to do so.

Another commenter suggested the Corporation hold a competition to determine the best quality programs before targeting money for new programs. The Corporation intends only to fund high-quality programs and does not believe it necessary to determine the quality of applications through a separate process. As discussed above, the amount the Corporation annually targets for new programs will not be a fixed amount. If the Corporation has any remaining funds from the amount allocated for new high-quality programs that year, the Corporation will make these funds available to recompeting and continuation grantees.

Other Sustainability Issues

Several commenters expressed concern that the Corporation's proposed sustainability strategy may in fact jeopardize programs in low-income and economically-distressed regions of the country. As discussed more fully in the section dealing with increased grantee share, the final rule accommodates programs located in rural or severely economically-distressed areas of the country that are unable to meet the higher match requirements by allowing them to request a waiver that would qualify them for an alternative lower match requirement. The rule also includes programs in rural and severely economically-distressed areas in the list of programs eligible for special consideration in the competitive selection process.

One commenter expressed concern that fundraising costs are currently not included in the budgets submitted to the Corporation, obscuring the true cost of doing business as an AmeriCorps program. This commenter suggested that, given the increased emphasis on program fundraising and increased match, the Corporation request an exception from the Office of Management and Budget to allow development costs to count as match or be reimbursed. It is government-wide Federal policy that fundraising costs are not reimbursable, and the Corporation can find no basis upon which it may deviate from that policy. Many other

Federal grant programs require a 50 percent match without corresponding OMB waivers relating to development costs.

Another commenter suggested that the Corporation apply different, presumably less rigorous, sustainability requirements and measures to "stand alone" AmeriCorps programs—that is, organizations whose sole purpose is to carry out AmeriCorps. Again, the Corporation does not find sufficient merit to the suggestion to make a change in the final rule. Sustainability is one of the core principles of this rule. While the final rule carves out some limited exceptions to the sustainability requirements, the characteristics of a "stand-alone" AmeriCorps program are not sufficiently different from other AmeriCorps programs to warrant different treatment. Moreover, the Corporation wants to avoid creating a disincentive for an organization to diversify its activities.

In several places in this final rule, the Corporation makes a distinction between compliance with a requirement and performance under the competitive selection criteria. For example, the final rule requires programs to recruit or support volunteers, unless the Corporation waives the requirement. At the same time, the selection criteria for AmeriCorps grants include volunteer recruitment and support as a competitive criterion. A proposal that does not include volunteer recruitment or support will potentially score lower in that category, regardless of whether, ultimately, the Corporation waives the volunteer recruitment or support requirement when making an award. Similarly, in the area of match, the Corporation is establishing minimum requirements for grantees that the Corporation will enforce, generally upon closing out a grant. If a grantee has not met its minimum required match, the grantee will have to repay funds to the Corporation. The selection criteria, on the other hand, look at match also from a performance perspective: An organization's failure to meet its budgeted match may negatively impact its success in the competitive process, but will not translate into a requirement that the organization repay funds. When considering the final rule, one should bear in mind this distinction between compliance and performance.

The Corporation believes that its approach represents a fair, equitable, and authoritative resolution of the issue of programmatic, organizational, and financial sustainability. The rules are authorized by, and consistent with, our enabling legislation, and support our goals of supporting and strengthening high-quality programs while leveraging Federal resources to achieve the greatest benefit possible for our nation's communities. Predictability and consistency are crucial elements of this rulemaking. Thus, we seek to provide clear guidance to our grantees on our long-term expectations for sustainability, which we believe conclusively resolves the issue.

B. Intermediaries

The Corporation received significant public comment regarding intermediaries and, in particular, the potential effect on those entities of efforts to promote sustainability. There is, and should continue to be, a prominent place for intermediaries in the national and community service portfolio, particularly given their important role in reaching smaller community organizations, including faith-based organizations. The Corporation recognizes that many intermediary models include a regular infusion of new sites, which, as with any new program, may have higher costs initially. In designing the selection criteria, the Corporation has explicitly recognized the potentially higher cost of some intermediary models.

One commenter suggested that the Corporation define "intermediary" as a program that "places members in community-based and faith-based organizations in specific communities." This commenter indicated that these intermediary model programs are more expensive because they take on new partnerships each year and must manage multiple partnerships. The higher relative cost of these intermediary models should, according to this commenter, be recognized in the selection criteria for cost-effectiveness. As discussed in the selection criteria below, the cost-effectiveness criteria specifically take into account, among other things, the higher relative costs of programs that either bring on new sites or engage or serve difficult-to-reach populations. As far as defining "intermediary," the suggested definition is, based on the Corporation's experience, too imprecise. The Corporation has spent considerable effort examining intermediaries and has determined that its portfolio of grantees includes many different models of intermediary, such that including a cost-effectiveness criterion for a multi-faceted category of organizations would not be appropriate or workable.

The Corporation has set matching requirements generally at the grantee or parent organization level, rather than at the member placement or service site level, and we have not adjusted the matching requirements based on the proportion of new sites in any given year. We believe that establishing the matching requirements at the parent organization level gives greater flexibility to intermediaries to manage and achieve a healthy mix of new and established sites. As discussed more fully below in section VI(C), the Corporation is sensitive to the fact that the increased match requirements may create obstacles for some intermediary organizations. In particular, the Corporation is concerned about intermediary organizations that place members in small and new grass-roots organizations in needy communities, and rely on those communities to contribute matching resources to the intermediary in order to participate.

C. Education Award Programs (EAP)

The Education Award Program (EAP) allocates education awards to national, State and local community service programs that can support most or all of the costs associated with managing the service of AmeriCorps members from sources other than the Corporation. Several commenters recommended that the final rule clarify the extent to which its provisions apply to Education Award Programs (EAP). One commenter recommended that EAP grantees be exempted from all "irrelevant sections," including those referring to match generation, volunteer generation, evaluation, and health care.

The final rule explicitly excludes Education Award Program grantees from its provisions where necessary, and as described herein.

EAP—Sustainability and Cost Effectiveness

Several commenters opined that the discussion of sustainability and its related implementation simply should not apply to EAP grantees. These commenters believe that EAP programs are the epitome of sustainability, because they already manage programs with minimal financial assistance from the Federal Government, other than the education award that members receive for completing a term of service. In particular, these commenters opposed using cost per MSY as a selection criterion for Education Award Program grantees, as these grantees receive fixed amount grants of $400 per MSY currently. Two commenters indicated that EAP programs invest significant amounts of non-Corporation resources in their programs, and they are concerned that the Corporation has not recognized or rewarded that investment in considering program sustainability.

In the final rule's selection criteria, the Corporation has retained Corporation cost per MSY as an important factor to consider in determining a program's cost-effectiveness for programs other than Education Award Program grantees. For Education Award Program grantees, the Corporation has included explicit language to make clear that Corporation cost per MSY is not a factor in considering their cost-effectiveness. However, other measures of cost-effectiveness will apply to Education Award Program grants.

The Corporation agrees that the EAP program is a clear example of a sustainable program from a financial perspective. The Corporation is aware of the significant financial contribution and investment that EAPs make in their programs and the relatively small amount of money they receive from the Corporation. The question, in evaluating EAP programs in the selection process, is the extent to which they can demonstrate sustainability in other ways. For example, an EAP program will fare better in the competitive process if it can show that its program is having a sustainable impact in the community, or its members are continuing to show, post-service, an ethic of service.

One commenter asked whether the current $400 cost per MSY for EAP programs would be increased. Another commenter indicated that the Corporation's reporting requirements have become increasingly burdensome, while the cost per MSY for Education Award Programs has steadily declined. Whether or not to increase the $400 cost per MSY is outside the scope of this regulation. The Corporation, as indicated below, is committed to streamlining its reporting requirements while ensuring accountability and sustainability, and will continue to work towards that goal for all its grantees.

EAP—Member Service Activities

Sections 2520.20 through 2520.55 of the final rule address allowable member service activities, and include a requirement that some component of each AmeriCorps program must involve recruiting or supporting volunteers. As discussed in part VI, encouraging more Americans to engage in service and volunteer activities is one of the pillars of our sustainability goals. Like any other AmeriCorps applicant, any EAP grantee that believes recruiting or supporting volunteers would fundamentally alter its program model may apply for a waiver of this requirement.

EAP—Non-Displacement of Volunteers

The proposed rule stated that the service of an AmeriCorps member must complement, and may not displace, the service of other volunteers in the community, including partial displacement such as reducing a volunteer's hours. As discussed below in the section addressing the non-displacement of volunteers provision (§ 2540.100), the Corporation has amended that section to remove these particular references to volunteer hours, in favor of a broader focus on addressing unmet needs. The Corporation will enforce this rule for all AmeriCorps programs, including EAP programs.

EAP—Performance Measures

The Corporation expects all its grantees, including EAP grantees, to adhere to performance reporting requirements. Performance measures are critical to demonstrating that national and community service programs are having their intended impact in our communities.

EAP—Evaluation

The proposed rule clearly indicated that EAP grantees would not be required to perform an independent evaluation of their programs. The final rule, while not requiring an independent evaluation, will require EAP grantees to perform an internal program evaluation, and submit that evaluation with the appropriate recompete application. This provision is consistent with the requirements in the NCSA.

D. Professional Corps

Professional Corps programs place members as teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet unmet needs in communities with an inadequate number of such professionals. Professional Corps programs pay 100 percent of the member support costs, but receive operating funds and an allocation of education awards for their members. Several commenters reiterated their desire that the Corporation establish separate application guidelines for professional corps programs to reflect the fact that they are responsible for 100 percent of the benefits paid to AmeriCorps members, and that their program model may be inconsistent with some of the general program requirements, such as volunteer recruitment and required training. The Corporation believes, however, that most program requirements can and should apply to all AmeriCorps programs, including Professional Corps programs, and therefore does not necessarily see a need for separate guidelines. If a program demonstrates, in its funding application, that its program design is incompatible with the requirement to recruit or support volunteers, the Corporation will consider waiving the requirement that programs recruit or support volunteers.

In addition, the Corporation has already taken the extra step of soliciting proposals for Professional Corps programs in a separate NOFA, and envisions doing so again in the future. The Corporation believes, however, that professional corps programs, particularly those for which the cost is largely borne by sponsoring organizations, will continue to compete well in all our AmeriCorps grant competitions. By grouping similar program models together in our selection process, the Corporation will ensure, to the maximum extent possible, that professional corps programs are evaluated together. The Corporation believes that all of these steps obviate the need for a separate set of application guidelines for professional corps programs.

Several commenters asked whether the Corporation intends for all teaching fellows programs to apply under a professional corps NOFA, rather than as Education Awards programs. Professional corps may apply under other applicable NOFAs, such as AmeriCorps State, National, or EAP, in addition to any applicable Professional Corps only NOFA.

VI. Specifics of the Final Rule and Analysis of Comments

As discussed in more detail below, the final rule:

- Defines the term "target community" as the geographic community in which an AmeriCorps grant applicant intends to address an identified unmet need.
- Defines the term "recognized equivalent of a high-school diploma" as including documents recognized for this purpose by the U.S. Department of Education.
- Clarifies the types of service activities in which AmeriCorps members may engage and explains the parameters for grantees and members to engage in capacity-building service activities, including volunteer recruitment and support.
- Increases, in an incremental and predictable fashion, the grantee's required share of program costs to a 50 percent overall match plateau over 10 years; provides alternative matching requirements for programs located in rural and severely economically

distressed communities, increasing the grantee's required share of program costs to a 35 percent overall match plateau over 10 years.

- Codifies that the amount of childcare payments the Corporation makes to an eligible provider on behalf of an AmeriCorps member may not exceed the amount authorized under the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508).
- Codifies the grant selection process and criteria.
- Clarifies how grantees are to calculate their budgeted Corporation cost per member service year (MSY).
- Codifies the Corporation's requirements for grantees to establish performance measures and to evaluate program outcomes, and establishes a grant amount threshold for required independent evaluations.
- Establishes qualifications for members serving as tutors and requirements for tutoring programs.
- Prohibits displacement of volunteers.
- Removes obsolete references to "transitional entities" serving as State commissions on national and community service.
- Broadens State commission flexibility to operate specified national service programs directly.

A. Definition of "Target Community" and "Recognized Equivalent of a High-School Diploma" (§ 2510.20)

Target Community

In the proposed rule, the Corporation defined the term "target community" as the geographic community for which an AmeriCorps grant applicant identifies an unmet human need. The Corporation assumed that educational, environmental, and public safety needs were all subsumed within the term "human need."

Two commenters interpreted this language as excluding educational, environmental, and public safety needs from the definition. In order to clarify our intent, the Corporation has amended the language to specifically include educational, environmental, and public safety needs (including disaster preparedness and response), in addition to other human needs. The Corporation has also made technical changes to the definition to make it clearer.

Recognized Equivalent of a High-School Diploma

In reading the comments on the proposed tutor requirements, the Corporation concluded that grantees were not clear that the term "high-school diploma or its equivalent" means more than simply a high-school diploma or a GED. For the sake of clarity, the Corporation is including a technical amendment to § 2510.20 to clearly define what is a recognized equivalent to a high-school diploma. The definition incorporates the Department of Education's definition of the equivalent to a high-school diploma. Under the Department of Education's regulations (34 CFR § 600.2), the equivalent to a high-school diploma includes not only a GED, but also (1) a State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent to a high-school diploma; (2) an academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit towards a bachelor's degree; or (3) for a person seeking to enroll (or enrolled) in an educational program that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

B. Member Service Activities on Behalf of the Organization (§§ 2520.20 Through 2520.60)

Except for those member activities specifically prohibited in sections 132 and 174 of the Act, as amended, the Corporation has broad authority to determine appropriate service activities for AmeriCorps members. In the proposed regulation, the Corporation largely codified and clarified the Corporation's current guidelines and grant provisions on this issue. Specifically, the proposed rule clarified that AmeriCorps members may: (1) Perform direct service activities, and (2) engage in other activities that build the organizational and financial capacity of nonprofit organizations and communities, including volunteer recruitment and certain fundraising activities.

Several commenters supported allowing AmeriCorps members to be involved in capacity-building, including fundraising activities. Others expressed concern that AmeriCorps may be diluting its mission by allowing members to engage in capacity building activities, rather than direct service exclusively. One commenter opposed members engaging in anything other than direct service, on the basis that partner organizations are providing matching resources for direct services provided onsite, such as tutoring during the school day. Another commenter expressed the hope that this policy of allowing member capacity-building activities remain an opportunity for programs, but not become a mandate.

The principal purpose of AmeriCorps is still direct service and "getting things done" in our communities and our country. With the exception of the requirement that programs recruit or support volunteers, the final rule does not require that programs allow members to engage in any other capacity-building activities. The final rule merely permits members to engage in such activities, at the discretion of the program. That said, the Corporation believes that AmeriCorps members and AmeriCorps funds have the ability to leverage resources and increase the capacity of the organizations with, and the communities in which, they serve. The Corporation sees no compelling reason to limit members only to direct service, as valuable as that is, when they could also be recruiting or supporting volunteers, helping to raise funds for their projects, and helping to build sustainable service in their communities. Because these activities promote sustainability, which is one of the primary reasons for this rulemaking, the final rule remains unchanged from the proposed rule in terms of permitting members to engage in both direct service and capacity-building activities.

One commenter recommended adding K–12 education as a fifth example under "developing collaborative relationships with other organizations working to achieve similar goals in the community" in § 2520.30(b)(4). The Corporation agrees that including K–12 education in that section is appropriate, but believes that the broader category of "local education agencies or organizations" is the most appropriate descriptor. Consequently, the Corporation has added "local education agencies or organizations" as a fifth example in § 2520.30(b)(4).

AmeriCorps Members Serving With Faith-Based Organizations

The Corporation received comments from several organizations about AmeriCorps members serving with faith-based organizations. Of the comments relating to matters in the proposed rule, one recommended that the Corporation clarify the final rule to ensure that activities on behalf of participating organizations meet statutory and constitutional safeguards regarding religious activity. Specifically, this commenter recommended that §§ 2520.20 through 2520.65 be amended to acknowledge the statutory restrictions on member activities. Another

commenter recommended that the Corporation develop and provide clear guidance for AmeriCorps programs working with faith-based organizations.

The redesignated section 2520.65 (formerly § 2520.30) of the regulations addresses AmeriCorps members' prohibited activities, including those relating to religious activities. The Corporation believes that these prohibitions are sufficiently clear, and further that it would be outside the scope of this rulemaking process to amend them at this time.

One commenter suggested that the regulations require faith-based organizations that receive AmeriCorps funds to establish a separate corporate structure to receive and segregate government funds and the capacity-building activities thereby supported. The Corporation disagrees with this suggestion. While an organization is free to establish a separate account for its Corporation funds, it would be unfair to require faith-based organizations to comply with these additional burdens. Except for the Education Award Program, which offers a modest fixed amount grant, the Corporation requires all its grantees to track their Corporation funds separately and to ensure that they use their Corporation funds only for reasonable and necessary expenses and permissible program activities.

Volunteer Recruitment or Support (§ 2520.35)

One focus of Executive Order 13331 is leveraging Federal resources "to enable the recruitment and effective management of a larger number of volunteers than is currently possible." The proposed regulations clearly directed that some component of an AmeriCorps grant must help build the long-term capacity of nonprofit organizations and the community by recruiting and supporting volunteers. While this has implicitly been a requirement over the past two years, clarifying and reinforcing this requirement in regulation is expected to encourage more Americans to engage in service and volunteer activities, and advance program goals.

One commenter stated that its new homeland security program was successful because AmeriCorps became a tool for partnering with local American Red Cross chapters to maximize the effectiveness of community volunteers by offering them a structured, supervised and coordinated volunteer experience.

On the other hand, several other commenters expressed reservations about the proposed requirement that programs recruit or support volunteers. One commenter stated that it would "not be an effective use of resources to pull AmeriCorps into volunteer recruitment," and that the regulation should be broadened to allow AmeriCorps members to support existing volunteer efforts, rather than requiring every program to generate and recruit volunteers. The language in § 2520.35 of the proposed rule specifically gives programs the option of recruiting *or* supporting volunteers—it does not require all programs to recruit volunteers. Some programs, for example, may not be able to recruit volunteers, but may be able to support volunteers recruited by other organizations. The Corporation, therefore, has not changed the language in this section of the final rule.

Several commenters stated that the recruitment, supervision, and training of volunteers requires higher levels of training and management skills than members generally have, and detracts from direct service and service outcomes. One of these commenters suggested that the Corporation encourage volunteer recruitment, rather than require it. Another commenter stated that the Corporation should not stress sheer numbers of volunteers to the detriment of quality service and effectiveness. In particular, this commenter suggested that the Corporation should guard against taxing the volunteer base beyond its capacity, bearing in mind that all its streams of service, including AmeriCorps State and National, AmeriCorps VISTA, Learn and Serve, as well as Citizen Corps, America's Promise, and the Points of Light Foundation, are recruiting from the same pool of potential volunteers.

As stated in the proposed rule, the Corporation does not intend for this requirement to distract from an organization's mission, nor do we expect grantees to replace direct service with volunteer generation and other capacity-building activities. In most cases, direct service and volunteer recruitment or support can complement each other to strengthen programs and communities. When considering how an AmeriCorps program can promote the effective involvement of volunteers, applicants have the flexibility to determine the best way to enhance or build upon the direct service goals of the program in which the AmeriCorps members are serving and to propose capacity-building activities accordingly. The Corporation strongly believes that most, if not all, programs can support the goal of increasing and supporting volunteering in this country.

As discussed in the proposed rule, however, the Corporation recognizes that some program models, such as certain professional corps, youth corps, and programs in some rural locations with a limited volunteer pool, may not be able to include significant volunteer recruitment or support in their program model, and the Corporation will take these and other factors into account in considering requests to waive the requirement that programs recruit or support volunteers.

The Corporation is maintaining the requirement that programs recruit or support volunteers as currently drafted. We believe that requiring programs to recruit or support volunteers is central to the Corporation's mission of leveraging resources.

One commenter was concerned that many of the member activities permitted by the proposed rule are currently activities performed either by volunteers or employees. This commenter, therefore, read the proposed rule as encouraging displacement of volunteers and employees. In fact, the Corporation prohibits displacement of volunteers and employees. The Corporation only funds programs whose activities add value beyond what would occur in the absence of our funding. Any program that simply replaces volunteers or staff with AmeriCorps members performing the same activities will, by definition, be unable to demonstrate that its program adds value and meets unmet needs in the community.

One commenter saw a disparity between full-time programs and part-time programs in terms of their ability to recruit and support volunteers, and the potential for the Corporation to favor full-time programs. This commenter's view was that a full-time program has more resources upon which to draw when recruiting volunteers and thus an advantage in the grant selection process. The Corporation does not favor full-time over part-time programs, or vice versa. The Corporation seeks to achieve the best use of its resources in light of priorities and funding constraints. In applying its selection criteria, the Corporation has sought to take into account similarities and differences between programs, including part-time and full-time programs. A program of members serving less than full-time would have the opportunity to articulate in its application the challenges it faces in meeting any particular requirement or selection criterion, including the volunteer support requirement.

Several commenters asked whether a program in which AmeriCorps teaching fellows guide K–12 students in a service-learning project could count those students as volunteers for purposes of the volunteer support

component. These commenters said that most Teaching Fellows Programs have a service-learning requirement and that, given the increasing use of service-learning in K–12 schools as a way to connect academic learning to service, it would be helpful to see this reflected in the new rule. One commenter recommended that the section be renamed "Volunteer Recruitment or Service Learning" to ensure that AmeriCorps won't be criticized for counting mandatory K–12 class activities as "volunteer" work.

The Corporation intends to interpret the requirement that programs recruit or support volunteers broadly so as to allow a program to count as volunteers any volunteer activity generated, supported, or coordinated by its AmeriCorps members for purposes of requirement. A program could therefore expect to count as volunteers students engaged in service-learning projects under the supervision of AmeriCorps members. The Corporation does not believe it is necessary to rename the regulatory section to specifically include service-learning, as we will broadly interpret the term "volunteers," as used in this section.

Waiver of Requirement To Recruit or Support Volunteers

Several commenters requested that the Corporation clearly define the method and timing for requesting a waiver from the requirement to recruit or support volunteers, and implement it as part of a pre-application process. Three commenters added that the rule should clearly state that applying for a waiver will not negatively affect a proposal's success in the grant selection process.

The Corporation views volunteer recruitment and support as both a requirement and a competitive criterion in the grant selection process. The Corporation expects that a program that believes it is unable to fulfill the requirement to support or recruit volunteers will address that inability in its application and thereby request a waiver from the requirement. While a waiver request itself will not disadvantage an applicant, failure to address volunteer recruitment or support at all will be a disadvantage in the grant selection process. That said, the extent to which a program recruits or supports volunteers is but one criterion in the grant selection process—the Corporation does not expect that every applicant will be able to meet or demonstrate it can fulfill every criterion. In order to succeed in a competitive grant making process, a program unable to include volunteer recruitment or support will simply have to deliver more with respect to other selection criteria.

If the Corporation is ready to negotiate an applicant's award, and the applicant has requested a waiver, the Corporation will then decide whether to relieve the particular program of the requirement to support or recruit volunteers. The Corporation needs the flexibility, in building our portfolio, to balance the types of programs we will fund. Providing a pre-application waiver, which would essentially entail reviewing an applicant's entire application outside of the competitive process to assess the program design, would undermine our ability to achieve that balance. Furthermore, it would not be the best use of our resources to consider waiver requests for applications that we have not yet determined to be of sufficient quality to receive funding.

The Corporation reiterates, however, that a State commission can require its subgrantees to include volunteer recruitment and support, without regard to whether the Corporation might be willing to waive the requirement. Applicants applying for funding through a State commission will be required to request a waiver from the requirement to support or recruit volunteers through the State commission. We expect a commission to forward requests for waivers only from those applicants for whom the commission has approved the initial request. The Corporation will leave to State commissions the determination of whether a formula applicant effectively makes the case for a waiver from the requirement to support or recruit volunteers, but expects State commissions to make these decisions judiciously. The Corporation will include waiver application instructions in the grant application instructions.

Fundraising (§ 2520.40)

The proposed regulation also clarified that AmeriCorps members may help organizations raise resources directly in support of service activities that meet local environmental, educational, public safety, homeland security, or other human needs. The proposed rule allowed members to participate in a wide range of fundraising activities if these activities make up only a relatively small amount of any individual member's overall service hours. It also allowed members to write grant applications excepting those for AmeriCorps or any other Federal funding. The Corporation believes that these activities could enhance the use of AmeriCorps members to build the capacity of nonprofit organizations, and advance the professional development of the members themselves.

The proposed rule's provisions governing fundraising were more flexible for AmeriCorps members than those for grantee staff, who are subject to Federal cost principles described in the Office of Management and Budget Circulars that generally disallow costs incurred in organized fundraising.

Several commenters were supportive of AmeriCorps members being allowed to engage in fundraising, but had areas of concern. In particular, several commenters felt it was as important for program staff to be allowed to engage in fundraising on AmeriCorps time. Specifically, some commenters opined that if members may engage in fundraising, staff must be able to do so in order to coach, train, and supervise the members, and that absence of this ability for staff may fail to produce positive results.

The OMB circulars set the parameters for allowable expenses and specifically identify the cost of development officers and fundraising staff as unallowable expenses. It would be inconsistent with government-wide rules for the Corporation to allow otherwise. Thus, the final rule is the same as the proposed rule with respect to the restrictions on staff fundraising.

One commenter stated that the language in § 2520.40(a) and (c)(1) implies that members may raise resources for program operating expenses, including staff salaries, travel, supplies, and, equipment. At most non-profit agencies, according to this commenter, this type of fundraising is the responsibility of paid staff. The Corporation's intent is merely to give grantees flexibility to allow members to engage in fundraising for reasonable and necessary costs attributable to the AmeriCorps project, which may, in certain circumstances include the type of expenses this commenter has listed. The Corporation is, in no way, requiring that members engage in fundraising. If programs do use members for fundraising, the programs will nonetheless have to ensure they can continue to meet performance expectations and show results.

One commenter suggested that the rule specifically allow members to engage more broadly in organized fundraising, "including financial campaigns, endowment drives, solicitation of gifts and bequests" and similar activities performed "solely to raise capital or obtain contributions." The Corporation's intention was to limit member fundraising to support for the program or project with which they are

serving, and its approved program objectives. Member fundraising was not intended to support on-going broad organizational fundraising objectives. The final rule does not incorporate the suggested change.

Two commenters questioned the efficiency and cost effectiveness of having members help with fundraising. One stated that fundraising is a skill that requires contacts and grant writing abilities that develop over several years. The other commenter felt that many organizations use professional fundraisers and that the obstacle to raising resources is not lack of volunteer fundraisers, but rather the economy. The Corporation takes no position on whether or not having members engage in fundraising is efficient. Some organizations with limited resources may find it useful to use AmeriCorps members for some limited fundraising. Other organizations may not. Ultimately, it is up to the individual program to decide whether, and to what extent, to allow members to engage in fundraising activities. If a program does intend for its members to engage in fundraising, the program should inform prospective members that fundraising will be one of their activities. The Corporation's goal is simply to increase the flexibility of the rules in this area to enable programs to achieve results.

One commenter asked that the Corporation clarify that including member fundraising in a program design will not advantage that program in the AmeriCorps grant selection process. The Corporation will not consider member fundraising as a competitive factor in selecting applicants, and an applicant's decision to have or not have members fundraise will not have a bearing on the selection process. While the Corporation will not judge whether a program chooses to have members engage in fundraising activities, we may assess, either during review or as part of our monitoring and oversight function, whether the fundraising activities are reasonably connected to the program's ability to carry out its objectives and meet its performance measures.

Limitation on Time Spent Fundraising (§ 2520.45)

In the proposed rule, the Corporation limited the time any individual member may spend fundraising to not more than 10 percent of that member's term of service. Several commenters requested that the Corporation define recordkeeping requirements for tracking member fundraising and ensure that they are not overly burdensome to programs. The Corporation will require programs to identify fundraising on member time-sheets, just as they currently identify hours that members spend training. Again, member fundraising is an option, not a requirement. If a program chooses to have members engage in fundraising, the program must track and report on the number of hours members spend on fundraising activities.

Several commenters believed that the 10 percent cap on hours spent fundraising should be counted in the aggregate across the program, as it has been for training and education activities, rather than member-by-member. Another commenter proposed that members be allowed to exceed 10 percent of their time on fundraising when fundraising activities are geared toward efforts to build organizational capacity and expand services. The Corporation's goal in establishing a member-by-member limit is to ensure that any one member does not spend a disproportionate number of hours on fundraising activities. Consequently, the Corporation has left the 10 percent limit on a per-member basis. In addition, the Corporation considers 10 percent, or the equivalent of 170 hours for the average full-time member, as sufficient to allow for a meaningful member contribution in this area. The Corporation, therefore, has not increased the maximum allowable percentage in the final rule.

Clerical and Administrative Activities (§ 2520.65 in Proposed Rule)

Prior to issuing the proposed rule, the general rule prohibited AmeriCorps members from engaging in clerical activities as part of their service, except if incidental to direct service, or if the Corporation authorized otherwise in connection with homeland security or other activities. The general expectation and practice among AmeriCorps grantees was that members did not perform clerical activities, except as an incidental part of their direct service. In the proposed rule, the Corporation increased grantees' ability to allow members to perform clerical activities, up to a 10 percent cap of each member's term of service.

Many commenters opposed allowing members to perform any administrative duties. One commenter was concerned that this provision would create an incentive to take members away from direct service activities. Two other commenters were concerned about members supplanting the duties formerly performed by employees. Another commenter was concerned about the administrative burden of keeping records to document compliance with this limitation. Another was concerned that one of the reasons that individuals join AmeriCorps is because they believe they will be doing real service work and making a differenee, and not to do clerical work as part of their regularly expected or scheduled activities.

The Corporation agrees that the proposed rule did not sufficiently consider the potential for these and other unintended consequences. The Corporation is, therefore, removing from the final rule § 2520.65 that would allow 10 percent of a member's term of service to be spent on administrative activities, and thereby returning to the current policy. The common expectation among program directors and AmeriCorps members should be that members may not engage in unreasonable amounts of clerical activities, except in exceptional circumstances as approved by the Corporation. The Corporation believes that the best way to resolve issues relating to members engaging in more significant clerical activities is for Corporation staff to address them on a case-by-case basis directly with grantees as a program quality issue. In limited circumstances, the Corporation may approve a member performing more extensive clerical duties in connection with disaster relief, or other compelling community needs. For example, we might approve a member engaging in some limited amount of clerical activities to lend support to an organization whose regular staff has been called up in the armed forces. On the other hand, it would be inappropriate for an individual to be performing clerical work for extended periods as a part of his or her daily responsibilities in a program not faced with a compelling need as described above.

Fee-for-Service Activities (§ 2520.55)

The proposed rule authorized programs, where appropriate, to collect fees for services provided by AmeriCorps members. One commenter was concerned that allowing fee-for-service in AmeriCorps programs could result in programs competing with other nonprofits and for-profits. The Corporation, consistent with government-wide OMB circulars, has always allowed fee-for-service activities under limited circumstances. For example, an AmeriCorps program that provides inoculations might reasonably charge a nominal fee for providing flu shots, in order to defray costs of the medication. The Corporation does not anticipate that programs will charge the public for every service they provide. In addition, the Corporation's goal is to fund programs meeting unmet needs. We, therefore, do not anticipate

programs will be providing a service that already exists elsewhere in the program's community. For sake of clarity, the Corporation has modified the language in § 2520.55 to state that organizations may choose to collect fees for service under certain circumstances, rather than encouraging them to do so. The final rule maintains the language from the proposed rule that fees-for-service must be considered program income and used to finance the program's non-Corporation share of costs.

"80/20 Rule" and Education and Training Activities (§ 2520.50)

In the proposed rule, the Corporation codified its longstanding so-called "80/20" rule, which limits a program's aggregate number of hours for education and training activities to not more than 20 percent of its members' total service hours. Two commenters opposed the 20 percent limit for training and educational activities, particularly for programs engaged in tutoring. One of these commenters asked that the limit be raised to 25 percent; the other asked that it be raised to 30 percent. The Corporation continues to believe that 20 percent is an appropriate limit on training and education activities to ensure that programs are able to meet their programmatic objectives, and the final rule remains unchanged in that regard. However, the Corporation is establishing the base for the aggregate 20% limitation as the number of hours members agree to perform in their term of service, as reflected upon their enrollment in the National Service Trust. This clarification will alleviate the audit problem programs face when members are released from the program before completing the agreed-upon term of service, and the program has provided a large part of its training agenda at the beginning if the program year.

C. Increase in Required Grantee Share of Program Costs (§§ 2521.35 Through 2521.90)

Sections 121 and 140 of the Act require an AmeriCorps grantee to provide not less than 25 percent of operating costs and 15 percent of member support costs. The Corporation has the discretion under the statute to increase the minimum grantee share of costs, and did so in 1996, when we increased the grantee share of operating costs from 25 percent to 33 percent.

Section 130 of the Act explicitly authorizes the Corporation to ask an organization applying for renewal of assistance (or "recompete" funding) after an initial three-year grant period to describe how it has decreased its reliance on Federal funding. In addition, in our annual appropriations act each year dating back to fiscal year 1996, including most recently the Consolidated Appropriations Act for fiscal year 2005, Congress has directed the Corporation to "increase significantly the level of matching funds and in-kind contribution provided by the private sector," and to "reduce the total Federal costs per participant in all programs." Finally, E.O. 13331 directs that "national and community service programs should leverage Federal resources to maximize support from the private sector and from State and local governments."

Consequently, the proposed rule increased, in a predictable and incremental fashion, the grantee share of program costs to a 50 percent aggregate (overall) level by the 10th year in which an organization receives AmeriCorps funding. Under the proposed rule, each grantee was required to meet the current minimum requirements of 33 percent match (cash or in-kind) for operating costs and at least 15 percent match (non-Federal cash only, except for health care benefits) for member support costs. After meeting those minimum requirements, the grantee could meet the balance of its aggregate share of costs through any combination of operating or member support matching resources.

To avoid confusion about the terms "aggregate share" and "aggregate match" as used in the proposed rule, the Corporation has changed the terminology in the final rule to refer to an "overall match" or "overall share." The overall match or share is the total of the program operating costs match and the member support match that the program must provide starting in the fourth year the program receives a grant. For example, consider an AmeriCorps grant with a total budget of $400,000—$200,000 for member support that includes such items as the living allowance, FICA, worker's compensation, unemployment insurance, and health care costs, and $200,000 for program operating costs that includes staff, operating, and administrative costs. Current matching requirements would call for this grantee to provide at least 15 percent of member support costs ($30,000) and 33 percent of operating costs ($66,000). In this example, the minimum overall grantee share is $96,000, or about 25 percent. By year 10 with the same total budget, the program must provide $200,000 overall towards the $400,000 budget.

In the proposed rule, the new matching requirements began in the fourth year and increased in each year thereafter in which an organization received a program grant up to a 50% overall match by the tenth year an organization continued to receive funding for the project.

The proposed rule established that a current grantee or subgrantee that had received an AmeriCorps grant for one or more 3-year grant cycles at the time the regulation takes effect would begin meeting the match requirements at the year three level. So, for example, an organization that is in its fourth year of AmeriCorps funding when the regulation takes effect would remain under the existing requirement in the first year the new rule is in effect. In the second year the new rule is in effect, the grantee would be considered in year 4 on the new matching scale and its overall share would begin to increase in regular increments.

The proposed rule signaled the Corporation's intent to provide training and technical assistance to grantees to assist them in achieving their matching goals. We also committed to consulting with grantees to determine the most useful and appropriate training and technical assistance.

In the proposed rule, we indicated that we believe it is reasonable to expect most grantees to achieve the increased level of matching, and stated our expectation that State commissions continue to manage their portfolios to achieve even higher match levels.

Increased Match Requirements

Over 70 commenters addressed the proposed increase in match. Several commenters supported the proposed share increase in principle or as an overall strategy. One commission stated that increasing a program's match requirement each year strengthens the program's connection to the local community and increases the buy-in of program sponsors. Several commenters specifically indicated that their organizations would not have trouble meeting the new match requirements, but they were concerned about the effect of the new rule on other organizations, particularly those in rural and severely economically-distressed areas. One commission indicated that programs in its State would not have a problem meeting the in-kind match requirements, but would have trouble meeting the cash match requirement over time. In response to this last comment, a grantee's cash match requirement may not necessarily increase over time. Once a grantee meets the minimum 15 percent non-Federal cash match for member support costs, the grantee may meet the balance of its

overall share of costs through any combination of operating and member support matching resources, including in-kind donations, provided that the resources meet the criteria of 45 CFR 2541.240 or 45 CFR 2543.23, as applicable.

Most commenters on this issue opposed the proposed match increases. Most of these commenters viewed the increased match as inconsistent with the long-term stated goal of creating "a framework for long-term growth and sustainability of the AmeriCorps program as a public-private partnership." Many commenters stated that "in the current philanthropic climate, increasing the match requirements for AmeriCorps programs will destabilize those programs and force many out of existence." One commenter viewed the progressive match increases as "steps toward de-funding * * * without any consideration for need and the impact of the services provided." The Corporation, however, continues to believe that an important piece of sustainability is decreasing reliance on Federal funding, and increasing the capacity of organizations operating AmeriCorps programs to assume more of the cost. This will make existing grantees stronger and more tied to their communities, while allowing the Corporation to satisfy Congressional direction, invest in new programs, and expand the reach of national and community service. The Corporation does agree that there is a point at which match requirements can become de-stabilizing, but a 50 percent overall share does not reach that point. In addition, Congress has consistently directed the Corporation to "increase significantly the level of matching funds and in-kind contribution provided by the private sector." The Corporation is, therefore, maintaining the match requirements as drafted in the proposed rule, according to the following table, except for programs in rural or severely economically distressed communities, which we address more fully later:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10 and on
Minimum Overall Share	N/A	N/A	N/A	26%	30%	34%	38%	42%	46%	50%

The final rule clarifies that, as is currently the case, a grantee will be held to its matching requirements at grant closeout—usually at the end of each three-year grant cycle. At that time, the grantee must have contributed match in an amount equal to the combined total of each year's required match amounts. For example, if a grantee begins a recompeting program grant matching at the year 4 level (26 percent) and has a grant in the amount of $100,000 in the first year, $110,000 in the second year, and $115,000 in the third year, the grantee would be responsible at the end of the three-year grant for a total of $98,100 in match (the sum of 26 percent of $100,000 in the first year, 30 percent of $110,000 in the second year, and 34 percent of $115,000 in the third year.) The Corporation does not necessarily expect the grantee to provide match on a year-by-year basis according to the schedule, as long as the total match at the end of the three-year grant meets the regulatory requirements. If the grantee does not reach the 26 percent threshold of $100,000, or of actual expenditures, in the first year of the grant (year 4 on the matching scale), but makes up the difference by matching more than the amount required in year 2 or year 3 (year 5 or year 6 on the matching scale) such that the cumulative match across the three years meets the requirement, the grantee will be in compliance and will not be required to repay funds.

Several commenters indicated that the increased match requirements will force program staff to spend more time on the administrative burdens of raising and documenting match, which will directly impact member attrition, service hours, training and education, and programmatic outcomes. Many programs, however, have demonstrated that they can exceed the expected match levels without adverse results. Our common challenge is to share best practices to achieve both sustainability goals and improve program outcomes. For example, at least eight State commissions already have match requirements that are more stringent than the Corporation's current requirements.

One commenter questioned how the Corporation plans to use training and technical assistance to help programs that cannot meet the 50 percent match. In response, the Corporation reiterates its intent to target training and technical assistance to assist grantees having difficulty raising match. The Corporation will consult with grantees regarding the issues that training and technical assistance should address, and how best to deliver such training and technical assistance.

Timetable for Match Increases

One commenter supported the 3-year "establishment phase" during which the grantee share for new programs remains unchanged and "grandfathering" existing programs into the match schedule at the year 3 level.

A few commenters requested clarification as to what the match requirements would be for current programs that have completed one or more 3-year grant cycles on the date the regulation takes effect and how the "N/A" applies to a program beginning its match requirements at the year three level. In years 1 through 3 that an organization receives a grant, it is required only to meet the minimum 15 percent member support, and 33 percent operational costs match requirements. There is no overall match for years 1 through 3—hence the "N/A." In each year from year 4 on, once a grantee has met the minimum 15 percent and 33 percent as described above, it may meet the additional match in whatever combination of additional member support or operational costs match it deems appropriate. Any program that has received 3 or more years of AmeriCorps funding on the date the regulation takes effect will begin matching at the year 3 level (meeting the minimum matches in member support and operating costs). These programs will, therefore, have another 7 years before their overall match requirement reaches the maximum 50 percent match. A new program will be required to meet the 15 percent and 33 percent minimum match requirements for member support and program operating costs during its first three-year grant period, and the required overall match in year 4 and beyond, unless the program receives a waiver. The Corporation has not amended the final rule on this point.

The following table reflects when and how the new match requirements will take effect:

If in the 2005 program year, your program has received AmeriCorps funding for this many years	Then, you will begin matching in the 2005 program year at this year level
0	1
1	2
2	3
3	3
4 or more	3

Impact of Match Requirements on Small, Economically-Distressed, and Rural Communities

Many commenters raised concerns about the impact of the sustainability requirements on small, economically-distressed, and rural communities. One representative of a commission in a largely rural State was concerned that the increased match requirements would eventually mean that no programs would exist in that commission's State because of the lack of resources. Another State specifically requested that its "unique geography, weather, population, and general remoteness be reflected in the application of the new regulations, either granting [the State] an exception for sustainability rules or creating a less onerous sliding scale."

While the Corporation continues to believe that most programs can meet the requirements as stated in the proposed rule, the Corporation is concerned about the impact this rule could have on programs operating in rural and economically distressed areas across the country. The Corporation wishes to increase AmeriCorps participation in those areas and is concerned that a "one-size fits all" approach to the match might contravene that goal.

After much deliberation and consideration of the comments on this issue, the Corporation has developed an alternative match schedule that, while still requiring increases over time, does so more gradually up to a 35 percent overall match requirement in the tenth year an organization receives AmeriCorps funding. The Corporation will authorize the alternative match scale for programs that demonstrate they are in rural or severely economically distressed communities, and that they need the lower match requirement. This alternative match schedule will not be available to programs that the Corporation believes are able to meet the regular match requirements. For example, a program that historically has demonstrated its ability to meet the higher match will continue to be required to do so, even if it is located in a rural or severely economically distressed community. The alternative match requirement will allow programs in rural and severely economically distressed communities to provide match over 10 years at a lower rate than other programs, but still increase their overall match levels over time. The alternative match requirement will be in effect for the duration of the three-year grant period. A program that qualifies for the alternative match requirement will have to reapply to extend the alternative match requirement for any subsequent recompete application.

The alternative match scale for programs in rural or severely economically distressed communities will incrementally increase beginning in the seventh year the organization receives AmeriCorps funding and reach 35 percent by the tenth year the organization receives AmeriCorps funding. The following table summarizes the alternative match requirements for these programs:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10 and on
Minimum Overall Share	N/A	N/A	N/A	N/A	N/A	N/A	29%	31%	33%	35%

The alternative match requirement is designed to address the specific circumstances of programs that must primarily conduct their fundraising in low resource areas. The Corporation believes that this alternative lower match scale for the programs in our neediest communities will allow such programs to begin, or continue to participate in AmeriCorps and meet those communities' unmet needs.

Qualifying for Alternative Match Requirement as Rural

In determining whether a program is rural, the Corporation intends initially to consider the most recent Beale code rating published by the U.S. Department of Agriculture for the county in which the program is located. Any program located in a county with a Beale code of 6, 7, 8, or 9 will be eligible to apply for the alternative match requirement. The table below provides definitions for each Beale code.

2003 BEALE CODES

Code	Metro type	Description
1	Metro	Counties in metro areas of 1 million population or more.
2	Metro	Counties in metro areas of 250,000 to 1 million population.
3	Metro	Counties in metro areas of fewer than 250,000 population.
4	Non-metro	Urban population of 20,000 or more, adjacent to a metro area.
5	Non-metro	Urban population of 20,000 or more, not adjacent to a metro area.
6	Non-metro	Urban population of 2,500 to 19,999, adjacent to a metro area.
7	Non-metro	Urban population of 2,500 to 19,999, not adjacent to a metro area.
8	Non-metro	Completely rural or less than 2,500 urban population, adjacent to a metro area.
9	Non-metro	Completely rural or less than 2,500 urban population, not adjacent to a metro area.

Qualifying for Alternative Match Requirement as Severely Economically-Distressed

In determining whether a program is located in a severely economically-distressed county, the Corporation intends initially to consider the following county-level characteristics: County-level per capita income is less than or equal to 75 percent of the national average for all counties using the most recent census data or Bureau of Economic Analysis data; the county-level poverty rate is equal to or greater than 125 percent of the national average for all counties using the most recent census data; and county-level unemployment is above the national average for all counties for the previous 12 months using the most recently available Bureau of Labor Statistics data.

The following table provides the website addresses where the publicly-available information referred to above can be found:

Web site address	Explanation
www.econdata.net	Econdata.Net: This site links to a variety of social and economic data by States, counties and metro areas.
www.bea.doc.gov/bea/regional/rei	Bureau of Economic Analysis' Regional Economic Information System (REIS): Provides data on per capita income by county for all States except Puerto Rico.
www.census.gov/hhes/www/saipe/index.html	Census Bureau's Small Area Poverty Estimates: Provides data on poverty and population estimates by county for all States except Puerto Rico.
www.census.gov/main/www/cen2000.html	Census Bureau's American Fact-finder: Provides all 1990 and 2000 census data including estimates on poverty, per capita income and unemployment by counties, States, and metro areas including Puerto Rico.
www.bls.gov/lau/home.htm	Bureau of Labor Statistics' Local Area Unemployment Statistics (LAUS): Provides data on annual and monthly employment and unemployment by counties for all States including Puerto Rico.
http://www.ers.usda.gov/Data/RuralUrbanContinuumCodes/	U.S. Department of Agriculture's Rural-Urban Continuum Codes (Beale codes): Provides urban rural code for all counties in U.S.

The location of a program will be determined by the legal applicant's address, except where the Corporation in its sole discretion determines that some other address is more appropriate. If a particular legal applicant believes that its address or the use of county-level data is not the appropriate way to determine the program's location or its funding environment, the applicant may make its case to the Corporation as to why the Corporation should consider the program location differently and the basis for requesting the alternative match requirement. An example might include a program located in a more affluent or urban area but with a majority of its members serving at sites located in rural or severely economically distressed counties and whose fundraising primarily occurs in those counties through matching contributions from the sites. The Corporation will disseminate instructions on how to apply for the alternative match schedule in the AmeriCorps application instructions.

Note that the alternative match schedule for programs in rural and severely economically distressed counties does not replace the Corporation's existing statutory authority to waive match based on a demonstrated lack of resources at the local level (§ 2521.70). The Corporation accepts requests for waivers from any program unable to meet its match requirements if the waiver would be equitable due to lack of available financial resources at the local level. However, the Corporation provides these waivers only in extreme circumstances, and only when it would be equitable. The burden is on the grantee to demonstrate the unique lack of resources in its community that would support the Corporation's granting a waiver equitably.

Intermediaries

The Corporation received several comments from intermediary organizations expressing concern that the 50 percent match requirement would hamper their ability to provide service to communities through a changing portfolio of new and small community organizations, including faith-based. The Corporation believes that the higher match may be difficult for some organizations that regularly bring on new small sites that themselves contribute matching funds to meet matching requirements. Many faith-based and small-community based organizations are only able to participate in AmeriCorps through this type of intermediary organization that has the infrastructure to manage all the Corporation's requirements. The Corporation is concerned that the increase in match requirements to 50 percent over 10 years could create a barrier to those organizations' continued participation in AmeriCorps.

However, in attempting to craft regulatory language that addresses this issue, the Corporation was unable to adequately define "intermediary organizations" without the rule becoming either over-inclusive, or, alternately, inappropriately inciting organizations to change their business model. Moreover, after close analysis, the Corporation does not believe it necessary to make substantive changes to the regulations to accommodate these types of organizations, as the Corporation may use its statutory waiver authority to accommodate an organization that is having difficulty meeting its match requirements due to lack of resources at the local level.

The Corporation will consider waiving the higher match requirements for this type of intermediary if the intermediary demonstrates (1) that the majority of its members are placed in new organizations or small faith-based and other community organizations, and (2) the intermediary derives its matching funds substantially from the contributions of placement organizations that are unable to generate the higher match amounts.

One commenter suggested that the proposed match requirements would have a disproportionate impact on community organizations, including faith-based organizations, and thus, could violate section 104 of the Temporary Aid for Needy Families legislation (TANF), better known as "charitable choice." The Corporation is committed to equal protection and the expansion of opportunities for involvement by community

organizations, including faith-based organizations, and believes that this final rule includes several refinements that help to achieve those goals. These include (1) the Corporation's plan to review similar program models together in the selection process; (2) special consideration in the selection process for programs operated by, or involving, community organizations, including faith-based organizations; and (3) the ability of members to engage in capacity-building activities. In addition, the Corporation's waiver authority, as discussed above, will enable the Corporation to adjust match requirements under limited circumstances. The Corporation will continue to look for effective ways to include community organizations, including faith-based organizations, in national and community service.

Definition of "Grantee" for Purposes of Match Requirements

Several commenters asked that the Corporation clarify to whom the matching requirements apply. The Corporation has added a new section 2521.40 to clarify that matching requirements apply to subgrantees of State commissions and direct program grantees of the Corporation. The Corporation will hold State commissions to an aggregate overall match based on the matching levels of all its subgrantees, which will be adjusted annually to reflect the annual change in each of the commission's subgrantee's share of costs. A State commission will be required to repay funds to the Corporation if, in the aggregate, the commission's subgrantees do not meet their match requirements under these regulations. The Corporation will expect the State commissions to monitor match requirements for their subgrantees and ensure that individual subgrantees are meeting their match requirements. The Corporation will review subgrantee match levels when an organization recompetes for AmeriCorps funding. At that point, the Corporation will consider an applicant's success in meeting both its budgeted match (match as reflected in an applicant's grant application budget) and regulatory match requirements (match as required under these regulations).

Some national direct organizations requested that the match requirements be imposed at the parent organization (for multi-State grantees) level, while others believed that it would be more consistent to apply them at the sub-grantee or site level. One commenter noted that national directs need the flexibility to match at the grantee level rather than the operating site level, where resources may be more limited. The Corporation believes that the responsible entity for meeting the increased match requirements is the parent organization; however, the parent can choose either to pass down the match requirements or use a portfolio strategy to manage the match requirements across its sites.

Two commenters specifically noted that tracking a program's match requirements based on the applicant organization's Employer Identification Number (EIN) penalizes large organizations that support a number of programs. The Corporation agrees that the EIN is not the appropriate identifier to track program match. For purposes of determining the applicable match schedule, the Corporation will determine tenure based on the particular grant and project, rather than legal applicant. The Corporation is modifying its grants management systems to enable us to track the longevity of each program. Thus, one legal applicant will, theoretically, be able to receive funding for two separate programs, under two separate grants, subject to two different match scales depending upon when each program began to receive funding. Similarly, the local site of a national direct grantee may choose to end its relationship with the national direct and compete on its own for State commission funding. If successful, this would constitute a new program and a new grant, and matching requirements would begin at the year one level for this program.

State Flexibility To Meet Match Requirements (§ 2521.65 in the Proposed Rule)

Under § 2521.65 of the proposed rule, if a State commission determined that a particular subgrantee was unable to meet its required matching levels because it operated in a resource-poor community, the State commission could still meet that subgrantee's matching requirements by pairing a high-matching subgrantee in the State commission's portfolio with the low-matching subgrantee to make up the difference. Several commenters supported the proposal to provide the States with flexibility to manage their portfolio of grantees. Two other commenters, however, requested that the Corporation provide flexibility to States to use a State portfolio average for grantee share, rather than allowing commissions to pair low-matching with high-matching subgrantees, as described in the proposed rule. As discussed above, while a commission's subgrantees will be individually responsible to the State for meeting their required match levels according to the match scale they are on, we will hold State commissions to a State portfolio aggregate overall match, based on all the programs' match requirements in a State's portfolio. This means that a State commission will be required to monitor and enforce match requirements for its individual grantees, but will have the flexibility to accommodate discrepancies in match across its portfolio, without increasing its liability to repay funds. The Corporation will only consider the actual matching history of individual commission subgrantees if and when they apply for AmeriCorps competitive funding.

This revised approach makes the provision in the proposed rule that allowed commissions to pair a low-matching subgrantee with a high-matching one for the purpose of meeting match unnecessary. The Corporation has, therefore, deleted that provision from the final rule.

Match Requirements for Organizations With Break in Funding (§ 2521.80)

The proposed and final rule clarify that an organization that has not directly received an AmeriCorps State or National operational grant for five years or more, as determined by the end date of the organization's most recent grant period, may begin matching at the year 1 level upon receiving a new grant from the Corporation. This means that, for example, a site of an existing grantee, or a recipient of a planning grant, that chooses to apply directly to the Corporation for AmeriCorps program funding will be able to apply as a year 1 program, subject to the year 1 match requirements. A program that starts in a State's formula portfolio, on the other hand, and then moves three years later to the competitive pool, will continue meeting match requirements based on where the program was matching the year before. One commenter supported this approach. The final rule includes a new paragraph (b) to § 2521.80 that explains the requirements for former grantees with a break in funding of less than five years.

The following table summarizes the circumstances under which an organization would be deemed to have had a break in funding:

If you previously were a	And then, within 5 years, apply as a	Your status for purposes of match will be
National direct parent, Professional Corps, State competitive, or State formula program.	National direct parent, Professional Corps, State competitive, or State formula program.	Existing grantee (match at the level you would have matched the year following your last grant year).
National direct subgrantee or site, State competitive subgrantee or site, or State formula subgrantee or site.	National direct parent, Professional Corps, State competitive, or State formula program.	New grantee (begin match at year 1).
Any other Corporation grantee	National direct parent, Professional Corps, State competitive, or State formula program.	New grantee (begin match at year 1).

Changing Legal Applicants (§ 2521.90)

The proposed rule stated that an organization that is a new or replacement legal applicant for an existing program would be required to provide matching resources at the same level as the previous legal applicant was matching at the time the new organization took over the program. Two commenters objected to this provision, stating that the original legal applicant may have many established sources for match that are not available to the new legal applicant, and the latter therefore might not be able to pick up where the first legal applicant left off. Another commenter asked the Corporation to define an existing program under this proposed provision.

By existing program, the Corporation means a set of project activities meeting specific unmet needs of a community previously funded by the Corporation. Over the years, several programs have had a change in legal applicants either in the middle of a grant cycle, or at the end of a grant cycle. The Corporation, therefore, saw a need to include a provision to address this circumstance. To the extent that a new grantee is unable to meet the match at the level of the predecessor legal applicant, the grantee may request a waiver of the match requirements due to lack of resources at the local level.

Limitations on the Use of Federal Funds

The comments revealed some confusion over grantees using other Federal funds to meet the increased match requirements. As reflected above, the Federal share of member support costs, excluding health care, may not exceed 85 percent. There is no statutory prohibition or limit in the NCSA on an organization using other Federal funds, to the extent otherwise permitted, to cover its share of operating (*i.e.* costs other than member support) or health care costs. As a matter of compliance, grantees may use Federal funds for their non-member support related match, as long as the other Federal agency permits its funds to be used as match for Corporation funds. However, as a matter of program performance, more non-Federal funds are better, because Congress' mandate to the Corporation is to "increase significantly the level of matching funds and in-kind contributions provided by the private sector." Consequently, an organization's reliance on Federal funds could have an impact in the selection process, where we will consider the diversity of non-Corporation funding, including non-Federal funding, and the extent to which grantees are increasing private sector contributions.

Several commenters objected to the proposed blanket prohibition on a grantee's using other Federal funds for the grantee's share of member support costs. While the proposed rule appeared to set a maximum Federal share of 85 percent for all member benefits, that was not the Corporation's intent. The Corporation has amended the language in § 2522.250(b)(3), relating to health care benefits, to reflect, consistent with the NCSA, that health care benefits are subject to a maximum Corporation share of 85 percent, rather than a maximum Federal share.

The final rule also includes a technical amendment in § 2521.45(a)(2) relating to professional corps programs. In the proposed rule, the Corporation reiterated, in clearer language, the current regulatory language, by stating that professional corps programs could not use any Corporation *or other Federal funds* for any part of the member living allowance. In practice, the Corporation has never prohibited professional corps programs from using non-Corporation Federal funds towards the living allowance, and does not believe that such an extreme limitation is appropriate or warranted by statute. The Corporation is, therefore, amending the final rule to reflect that professional corps programs are prohibited only from using Corporation funds for the living allowance, thereby bringing the regulation in line with Corporation policy and practice.

Match Requirements for Indian Tribes

Indian Tribes must, as a general matter, meet the regular match requirements applicable to all Corporation grantees. Most of the Corporation's current tribal grantees, however, are located in rural or severely economically depressed areas of the country. Consequently, they will likely be eligible to waive into the alternative match requirement, assuming they have not demonstrated the ability to meet higher match requirements in the past. To the extent that a tribal grantee is not able to meet even the alternative match requirement, the Corporation will, as always, consider using its statutory waiver due to lack of resources at the local level. In compliance with Executive Order 13175, the Corporation will handle any waiver request from an Indian Tribe in an expedited manner.

Match Requirements for U.S. Territories

Section 1469a of title 48, United States Code, requires departments and agencies to waive "any requirement for local matching funds under $200,000 (including in-kind contributions) required by law" for Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Consequently, the Corporation waives the AmeriCorps matching requirements for those U.S. Territory governments. Non-profits and other organizations located in the territories that apply directly to the Corporation are not eligible for this title 48 waiver, and will be required to meet the match requirements applicable to all regular AmeriCorps programs, absent some other Corporation waiver.

Other Assistance for Low-Matching Programs

In the proposed rule, the Corporation identified several strategies of targeted assistance for otherwise well-performing and compliant programs who are demonstrably at risk of not meeting the new matching requirements. The Corporation remains committed to assisting grantees in the following ways: (1) By looking for opportunities to align our resources, including training and technical assistance and other program resources such as VISTA members, if appropriate, to help grantees identify new strategies to raise matching resources and community support and to help broaden and build the capacity of community organizations; (2) by

looking for opportunities to help raise resources; (3) by providing State commissions the flexibility to meet their overall match requirements in the aggregate across their portfolio of programs; and, (4) through limited use of the Corporation's statutory authority to waive match requirements for those satisfactorily performing and otherwise compliant programs that demonstrate an inability, in spite of reasonable efforts, to achieve sufficient financial support to meet the increased matching requirements.

The Corporation believes that incrementally increasing match requirements and providing an alternative match requirement for programs in rural and severely economically distressed communities, together with the measures described above that are designed to assist grantees in meeting the new requirements, satisfy Congressional direction and represent a fair, equitable, and authoritative resolution of the issue of organizational financial sustainability, such that additional requirements in annual appropriations bills, or through rulemaking, are not necessary. We intend to monitor and report to the public on a regular basis the progress grantees are making in leveraging Federal resources.

D. Codifying the Cap on Child-Care Payments and Corporation Share of Health Benefits (§ 2522.250)

Child Care

Section 140(e) of the Act authorizes the Corporation to establish guidelines on the availability and amount of child-care assistance. By current regulation, child-care payments for eligible AmeriCorps State and National members are "based on" amounts authorized under the Child Care and Development Block Grant Act of 1990. These payments are made directly to the child care provider on behalf of a full-time member eligible for childcare assistance. To be eligible, a full-time participant must be the parent or legal guardian of a child under 13 who resides with the participant, must have a family income less than 75 percent of the State's median income, must not currently be receiving child care assistance from another source (including another family member), and must certify that such assistance is necessary in order to participate in AmeriCorps. To be eligible to receive a payment, a child care provider must be eligible to receive payments under the Child Care and Development Block Grant Act of 1990. In the proposed rule, the Corporation made one change to existing regulation by explicitly capping the amount of child-care benefits for any individual AmeriCorps member at the level established by each State under the Child Care and Development Block Grant.

One commenter opposed the proposed change on the grounds that it could lead to a reduction in the amount of assistance available to an AmeriCorps member in a State that requires counties to match Federal Child Care and Development Block Grant funds. Several commenters expressed concern that the proposed rule did not provide direction to a State that is issued a waiver under the CCDBG program. Several commenters expressed concern that the proposed rule was not clear on what formula would be used to determine child care assistance. Two commenters commended the proposed rule for providing clarity and direction to State childcare agencies and providers. Another commenter recommended that current levels for child care be maintained in order to preserve equal access and opportunity to AmeriCorps.

The final rule ensures that child care assistance on behalf of eligible AmeriCorps members does not exceed applicable payment rates to an eligible child care provider established by each State under the Child Care and Development Block Grant Act. Under that Act, each State must certify that payment rates are sufficient to provide access to child care services for eligible families that are comparable to those provided to families that do not receive subsidies. To demonstrate that its plan achieves equal access, a State must consider the results of a local market survey conducted at least every two years. The CCBDG Act affords States latitude in setting payment rates—rather than a formal waiver mechanism—provided that a State demonstrates that it has considered key elements of equal access, outlined in the U.S. Department of Health and Human Services regulations published at 45 CFR 98.16 and 98.43. The fact that a particular State might require counties to contribute a portion of the payment does not affect the amount of the payment to an eligible provider, which is based on the local market survey. An AmeriCorps member is eligible for the same payment established by the State under the CCDBG Act to an eligible child care provider in the applicable locality, regardless of whether a county contributes to that payment. The Corporation seeks only to ensure that any child care assistance to an eligible AmeriCorps member not exceed the applicable payment rate to an eligible provider under the CCDBG Act. Therefore, the only change we have made in the final rule is to clarify that the payment rate in question is "to an eligible provider." However, we intend to solicit suggestions about how, given the relatively limited Federal funds available, we should structure the provision of child care assistance to full-time AmeriCorps members, and may amend these regulations in the future.

Health Care Benefits

In § 2522.250(b)(3) of the proposed rule, the Corporation mistakenly referred to a maximum *Federal* share for health care benefits, rather than the maximum *Corporation* share of 85 percent, as provided in statute. Several commenters noted the discrepancy. The Corporation has amended the above-referenced section, and added a new § 2521.45(a)(4) to now refer to the maximum Corporation share.

One commenter read the proposed rule as mandating health care benefits for all members. The Corporation did not, in fact, change any of the rules relating to health care benefits for AmeriCorps members. Programs must, as always, provide each full-time member with health benefits if the member does not otherwise have coverage.

E. AmeriCorps Grants Selection Process and Criteria (§§ 2522.400 Through 2522.475)

In addition to establishing specific AmeriCorps grant application requirements, section 130 of the Act, gives the Corporation broad authority to set additional application requirements and to establish the selection process. We are adjusting our grant selection criteria to meet three objectives: (1) To better align the selection criteria with elements that predict program success; (2) To incorporate into the selection criteria greater emphasis on all elements of sustainability; and (3) To provide transparency, predictability, and consistency for organizations applying for AmeriCorps funds.

The proposed rule described the Corporation's processes and criteria for selecting grantees. In selecting AmeriCorps programs, the Corporation generally needs to know four things: (1) An organization's plan and its expected outcomes; (2) Whether the organization can manage Federal funds, and operate and support the proposed program effectively; (3) The budget adequacy and cost-effectiveness of the proposed program; and (4) For an existing program, whether the organization has implemented a sound program, including achieving strong outputs and outcomes, demonstrating organizational

capability and cost-effectiveness, and complying with other Corporation requirements.

To address these issues, the proposed rule modified the current structure of three overall categories of criteria—Program Design, Organizational Capability (formerly Organizational Capacity), and Cost-Effectiveness (formerly Budget/Cost-Effectiveness). We adjusted the weights of the three categories to better balance program design against organizational strength, which is reflected through organizational capability and cost-effectiveness. Consequently,

- Program Design was worth 50 percent of the score (as opposed to 60 percent currently),
- Organizational Capability remained at its current 25 percent weight, and
- Cost-Effectiveness increased to 25 percent (as opposed to 15 percent currently).

Under these regulations, the Corporation's focus within Program Design is now on the relationship between an applicant's rationale and approach, on the one hand, and the outputs and outcomes to be achieved for members and the community, on the other. Most of the criteria from the Corporation's current AmeriCorps 2005 guidelines remain part of the revised selection criteria, although they may now appear under a different category. (Please visit our website at *www.nationalservice.gov/funding_initiatives* to view the AmeriCorps 2005 guidelines). We also added criteria across all three categories to better reflect our focus on outcomes and sustainability and our desire to maintain a portfolio that serves a broad range of people through diverse program models.

General Comments About Selection Criteria and Process

Two commenters supported the Corporation's effort to clarify the grant selection criteria. One of these commenters expressed the hope that this process and the criteria would foster stronger cooperation between States and the Corporation. Several commenters, however, felt that the proposed rule did not achieve the NPRM's stated goals of providing transparency, predictability, and consistency. Three commenters recommended maintaining the grant selection criteria currently in use.

The Corporation strongly believes that, in setting out the selection process and criteria in regulation, and tightening the selection criteria themselves, the Corporation has greatly increased the transparency, predictability and consistency of the selection process. Furthermore, the Corporation has endeavored to clarify, step by step, how the selection process works.

One commenter noted that the proposed rule fails to distinguish between new and recompeting applicants regarding which elements would apply only to recompeting organizations. The Corporation has amended the language to indicate, where relevant, that a particular provision applies only to applicants that have previously received AmeriCorps funding.

Some commenters read the proposed rule as removing State and local control over which programs receive funding in the State. The Corporation disagrees with this interpretation. First, States, as always, have broad discretion over which programs to fund through their formula allocation. Second, States continue to have the discretion to decide which proposals to forward to the Corporation for competitive funding. The selection criteria, as proposed, do not represent a substantial deviation from the selection criteria the Corporation has used up until now—they are more focused, clearer, more specific, and incorporate more elements relating to performance and sustainability.

Two commenters recommended that the selection criteria explicitly include program enrollment and retention rates. The Corporation agrees that a program's history of member enrollment and retention rates should be a factor in the selection process. The final rule includes a new subsection 2522.425(b)(2) to reflect this. The Corporation does not, however, believe it necessary to include a specific selection criterion on the timeliness of reporting, particularly since the Corporation may consider a grantee's reporting on prior grants under § 2522.470(b)(1), in the context of clarifying and verifying information in a grant application. We expect all Corporation grantees to comply with all program requirements, including timely reporting. While the Corporation has an interest in improving grantee timeliness with reporting requirements, we do not believe it is appropriate to measure as basic an expectation as meeting deadlines in the competitive process.

One commenter suggested that the Corporation hold a separate grant competition for stand-alone AmeriCorps programs whose sole mission is national service. This commenter viewed such stand-alone programs as having unique costs and benefits that the Corporation may not be able to consider in the context of a broader competition. The Corporation does not believe that a separate grants competition is necessary for these types of programs as we are prepared, in the grant selection process, to consider the unique circumstances of programs.

Overall Criteria Weight (§ 2522.440)

One commenter supported the increased weight on cost-effectiveness. Four commenters, on the other hand, specifically recommended keeping the weight of program design at 60 percent. One recommended decreasing the weight of organizational capability to 15 percent in order to keep program design at 60 percent. One commenter felt that 25 percent for program infrastructure (presumably organizational capability) was too high, because if a program is performing well and cost-effective, one may presume sound program infrastructure. The Corporation notes, in response, that we did not propose to change the current weight of organizational capability. Both the proposed rule and the final rule maintain the weight of organizational capability at its current 25 percent.

Several commenters recommended that program quality should be more important than cost-effectiveness, and others urged that program design and performance measurement be given more weight. Many commenters opposed increasing the weight of the cost-effectiveness category. One of these commenters believed that AmeriCorps programs are already cost-effective.

Four commenters suggested that the emphasis on cost-effectiveness will lead to lower quality programs. Several commenters expressed concern that it will discourage innovative program design, particularly those reaching hard to serve areas or populations, or distressed rural, poor communities with lack of private and local government resources. As stated throughout this document, the Corporation is very deliberately trying to ensure that the selection criteria, particularly those relating to cost-effectiveness, take into consideration the inherent costs and unique circumstances of each program. The Corporation, therefore, does not anticipate that the shift in emphasis of the selection criteria will lead to the results the commenters above are expecting. The Corporation will, however, monitor the impact of the proposed rule and will publicly share its findings.

Program Design (§ 2522.425)

One commenter stated that fostering civic responsibility should not be a criterion for selection. The Corporation disagrees. The Corporation believes that

AmeriCorps programs should plan for this in a systematic way, and that it is a relevant measure of sustainability. This criterion remains in the final rule.

One commenter recommended including in the final rule language that would ask intermediaries to identify the process by which they will select issue areas and partners, rather than require them to define services and partners for the coming year. Applicants can do this already under the proposed selection criteria. An organization that typically selects its placement sites and specific service activities following approval of the grant will be able, within the selection criteria as currently drafted, to identify how it will select its placement sites and emphasize the types of service activities the program typically supports. The Corporation will continue, however, to require all applicants to include their proposed operating sites and, at least, a general description of member activities in the application for funding.

One commenter recommended that if a program scores poorly in the rationale and approach category, it should receive no further consideration. The Corporation anticipates that any applicant that scores poorly in the rationale and approach category will be unable to adequately respond to the other selection criteria and, therefore, will ultimately score poorly overall. In our view, it is significantly easier to articulate the need for the program than to describe and secure all the elements necessary for program success. For that reason, we do not believe that the rationale and approach subcategory of program design needs more weight or emphasis than it had in the proposed rule.

One commenter recommended that the Corporation clarify its commitment to racial, ethnic, and socioeconomic diversity. Two commenters urged the Corporation to reward programs that successfully recruit a diverse group of participants in terms of racial, ethnic, socioeconomic, geographic and educational backgrounds in the grant selection process. In fact, the Corporation's selection criteria under program design specifically reward applicants who can show they have plans to recruit a diverse corps of members. Another commenter suggested the Corporation intensify efforts to identify and support programs that seek to enroll youth who are low-income or out-of-school. The Corporation's on-line application allows applicants to self-identify their program model from a list that includes youth corps. Our ability to more clearly identify program models, and our plan to review, to the extent possible, similar models together, will allow us to ensure that our portfolio of programs is rich and diverse. In addition, three of the Corporation's priorities, as listed in § 2522.450, specifically include this population.

One commenter interpreted the language in § 2522.425(c)(3) as expecting programs to replace member activities with volunteers. The language refers to assessing the extent to which a program "generates and supports volunteers to expand the reach of your program in the community." This section was not intended to result in volunteers replacing member activities—the goal of this provision was to assess the impact and reach of a program's volunteer generation and support activities in the community.

Organizational Capability (§ 2522.430)

In § 2522.430(c) of the proposed rule, the Corporation stated that in reviewing a proposal submitted by a State commission for competitive funding, the Corporation may deny funding to a program applicant if the Corporation determines that the State commission's financial management and monitoring capabilities are "materially weak." Several commenters expressed concern that the process for determining a State commission to be "materially weak" is not clear. One commenter recommended that the status of a commission be based on set criteria and clarified prior to the opening of the grant process, and others opined that applicants should not be penalized if their State commission is weak.

The Corporation's intent in including this factor in the selection criteria was to ensure that, in approving a State's portfolio of programs, the Corporation is able to match the commission's capacity with the needs of the programs we are approving. While the Corporation does assess commission capacity through the administrative standards process, the Corporation does not, in fact, have a mechanism by which it determines a State commission to be "materially weak," and therefore has decided not to use the term in this context. For these reasons, the Corporation has removed paragraph (c) from § 2522.430 in the final rule.

The Corporation will, however, assess a commission's capacity to manage and monitor grants as it prepares to approve the commission's grants package, and may determine that a commission does not have sufficient capacity to manage a particular grant, or manage more than a certain number of grants. The Corporation has added a new paragraph (c) to section 2522.470 that addresses this issue.

Section 2522.430(a)(3) of the proposed rule included as a criterion the extent to which an applicant is securing community support that is "stronger" and more diverse. One commenter found the use of the term "stronger" unclear, and recommended that the final rule replace that language with "recurs, expands in scope, or increases in amount." The Corporation agrees that the suggested language is more precise and has amended the final rule accordingly.

Cost Effectiveness and Corporation Cost per MSY (§ 2522.435)

In the proposed rule, the Corporation changed the name of the former Budget/Cost Effectiveness category to "Cost-Effectiveness" and increased the overall weight of the category from 15 percent to 25 percent. Within this category, the Corporation focused on the adequacy of the applicant's budget to support the planned program design, and whether the program is cost-effective, as measured through one or more of several indicators of cost-effectiveness, including a program's Corporation cost per MSY.

The Corporation received a significant number of comments on the proposed cost-effectiveness category. Several comments focused on defining the cost-effectiveness of a program based on program quality and results. Other commenters recommended determining cost-effectiveness by comparing similar program models for their value as an investment based on mission, quality, location, and results, as well as cost.

One commenter expressed concern that the Corporation would decide not to fund an otherwise high-quality program for falling just short of its required matching level. The Corporation's goal is to fund high-quality programs. The principal mechanism to enforce match requirements is through the grants closeout process, which could require a grantee to repay funds if the grantee has not met required match levels. The inability to meet match does not necessarily bar a program from successfully recompeting, because the selection process allows the Corporation to take into account specific circumstances, strengths, contributions, and challenges of individual programs in deciding who should receive funding. Clearly, a program's record of match is a factor the Corporation will consider, but it is just one of many factors, and each applicant will have the opportunity in the selection process to explain its record in meeting its required match.

Many commenters did not support increasing the weight of the cost-effectiveness category. Some commenters suggested that the emphasis on cost-effectiveness would lead to lower quality programs. One commenter suggested renaming the category as "Budget, Cost, and Grantee Share," maintaining the total score of the cost-effectiveness category at 15 percent (rather than 25 percent as proposed), and, within that 15 percent, assigning 5 percent for Corporation cost per MSY, 5 percent for budget grantee share, and 5 percent for adequacy of budget to support program design. Another commenter suggested weighting the budget adequacy with 50 percent of the points in that category, and Corporation cost per MSY with the other 50 percent. Another suggested that cost-effectiveness be further divided to reflect 60 percent for budget adequacy and 40 percent for Corporation cost per MSY.

With respect to renaming the category as proposed above, grantee share and Corporation cost per MSY are two of several indicators of cost-effectiveness. It would not, therefore, make sense to limit the category to these two indicators. The Corporation agrees, however, that removing the term "budget" from the name of this category may have led people to believe that cost-effectiveness was the only aspect the Corporation considered important. In fact, the Corporation believes that budget adequacy is an important factor in the selection process. Accordingly, the Corporation is reinserting the words "budget adequacy" into the title of this category of criteria in §§ 2522.420 through 2522.448.

As to the commenter's proposal to maintain the overall scoring of the cost-effectiveness and budget adequacy category back at 15 percent, the Corporation believes that doing so would be counter to its efforts to increase the importance of budget adequacy and cost-effectiveness in the grant selection process. The Corporation views cost-effectiveness and budget adequacy as at least as important as organizational capability, which is also 25 percent, and believes that the appropriate balance is 50 percent for program design, and 50 percent for organizational capability and cost-effectiveness and budget adequacy combined. Consequently, the Corporation is maintaining the cost-effectiveness and budget adequacy category at 25 percent in the final rule.

With respect to weighting the factors within cost-effectiveness and budget adequacy, the Corporation does see merit in clarifying how it will weigh the two separate criteria of cost-effectiveness and budget adequacy. Consequently, the final rule, in new § 2522.448, indicates that the criterion relating to program cost-effectiveness will be worth 15 points out of the 25, with the remaining 10 points for the adequacy of the budget to support the program design. The 15 points for program cost-effectiveness incorporate several different elements: The program's proposed Corporation cost per MSY, and other cost-effectiveness indicators, such as the extent to which the program demonstrates diverse non-Federal resources; the program's matching levels; and, for a recompeting program, the program's ability to expand outcomes without a commensurate increase in Corporation assistance. An applicant can receive high points for cost-effectiveness by proposing a competitive cost per MSY and by showing its strength in any one (or more) of the other cost-effectiveness criteria. We did not, however, include sub-scores for these individual elements, but only for cost-effectiveness as a whole.

Several commenters read the proposed rule as emphasizing cost over quality in the grant selection process. Two commenters recommended conducting a blind review of program design and organizational capacity prior to evaluating programs on the basis of cost-effectiveness in order to ensure that the Corporation funds programs with good models, rather than programs that are simply cheap. The Corporation notes that the cost-effectiveness portion of the new cost-effectiveness and budget adequacy category is worth only 15 of the 100 total possible points. While the Corporation is placing more weight on cost-effectiveness than in the past, this emphasis is consistent with Congressional direction and our efforts to promote program sustainability. That being said, the quality of a proposal is still important, and a poor quality program is unlikely to receive funding, even if it is low-cost.

Because cost-effectiveness is only worth 15 percent of the total score and the criteria allow the Corporation to take into account individual contributions and circumstances of programs, the Corporation sees no reason to review program design and organizational capacity separately—the most cost-effective program will not receive funding if the program model is not sound and the organization does not have the capability to operate it.

Two commenters requested clarification on how the 25 percent for cost-effectiveness and budget adequacy would apply to Education Award Programs. As discussed earlier, Corporation cost per MSY and increase in match indicators are not relevant in the context of assessing the cost-effectiveness of an EAP program. The Corporation does believe, however, that both the adequacy of the budget to support the program, and other indicators of cost-effectiveness can and should apply to EAP programs. Consequently, the cost-effectiveness and budget adequacy category will remain at 25 percent for EAP programs, just like for other programs. The Corporation has, however, amended § 2522.435 by adding a new paragraph (c) that explicitly identifies the cost-effectiveness indicators that do not apply to EAP programs.

Corporation Cost per MSY in the Selection Process

The proposed rule included, for the first time, Corporation cost per MSY as an indicator of cost-effectiveness. A few commenters noted that Corporation cost per MSY should be considered, but should not be the primary consideration. Many commenters read the proposed rule as making Corporation cost per MSY the paramount or "tie-breaker" criterion in the new selection criteria. This was not the Corporation's intent. The Corporation's goal in emphasizing its inclusion of Corporation cost per MSY in the criteria as one measure or indicator of cost-effectiveness was to give programs an incentive to lower their Corporation cost per MSY as one of many elements to be more competitive. The Corporation continues to view the cost per MSY as a key indicator of cost-effectiveness. Nonetheless, a program that has a higher Corporation cost per MSY that is justified in its application and that demonstrates cost efficiency in other ways under the cost-effectiveness criteria, could still score enough points in the cost-effectiveness category to be eligible for funding.

Five commenters found the proposed rule to be unrealistic in that it appears to value expanding program size and impact while, at the same time, decreasing funding. Several commenters recommended removing program growth and expansion from the selection criteria, given the emphasis on decreasing the Federal share of funding. The Corporation does not agree with this recommendation, as a program can show cost-effectiveness either by decreasing the Corporation share of costs *or* by growing in size without a commensurate growth in budget.

One commenter did not intrinsically have a concern with the increase in

emphasis in Corporation cost per MSY, but considered the determination of cost-effectiveness as subjective, and therefore suggested that each program be evaluated individually. While the Corporation will review programs together on panels of like programs, we do not score programs against each other, but rather each program individually against the selection criteria.

One commenter requested clarification of the terms "deeper impact" and "broader reach" as used in § 2522.435(a)(2)(iii) of the proposed rule (§ 2522.435(a)(1)(ii)(C) in the final rule). By "deeper impact," the Corporation is looking for more pronounced outcomes that show the program is having a more beneficial impact on a static number of beneficiaries. By "broader reach," the Corporation means outcomes that affect more beneficiaries in the community or affect a larger portion of the community with a static level of impact.

Individual Program Circumstances

Several commenters viewed the proposed rules as favoring low-cost programs over a program's quality and results. Some commenters were concerned that the criteria favor part-time programs over full-time programs. Other commenters viewed the selection criteria as favoring urban areas with more access to resources than rural areas. And yet another commenter was concerned that the rule did not adequately recognize or address the fact that different program models require different levels of Federal investment. Two commenters were concerned that the emphasis on cost-effectiveness will discourage innovative program designs, particularly those reaching hard-to-serve populations. Another commenter stated that the rule would threaten programs with at-risk members, because they require more resources than programs with college-educated members.

Sections 2522.430(b) and 2522.435(b) of the proposed rule indicated that, in assessing an organization's capability and the cost-effectiveness and budget adequacy of the proposed program, the Corporation would consider a variety of individual program circumstances that might put an applicant's proposal into context. The goal was to give the Corporation the opportunity to fully weigh the contributions and benefits, as well as the challenges that individual programs and organizations might face in competing under these criteria.

While the language in sections 2522.430(b) and 2522.435(b) remains unchanged, the Corporation reiterates here its commitment to considering cost-effectiveness in the context of all that the applicant proposes—including its level of innovation, its focus on areas with higher need, its program model, its contributions, and its challenges. The Corporation does not believe that there can be a "one cost fits all" approach in the AmeriCorps program; on the contrary, the Corporation recognizes the breadth and diversity of programs, service, community beneficiaries, and individual circumstances, and is committed to considering all of these when selecting programs. The Corporation will not replace high-quality and high-impact programs with low-cost programs that cannot meet the unmet needs in our communities.

Waiver Process and Impact on Selection

The proposed rule included two possible bases for waivers—one relating to the requirement to recruit or support volunteers; the other relating to match requirements. Several commenters expressed concern as to when applicants would apply for and receive waivers, and the impact those waivers would have on the selection process. Three commenters suggested that the Corporation address waiver requests before the applicant submits the full grant application, and three others asked how the waiver request would impact the selection process. Several commenters specifically recommended that waivers not affect grant scoring.

As discussed earlier in section VI(B) of this preamble, the Corporation intends to consider waivers of the requirement that programs recruit or support volunteers after the proposal has been reviewed, but prior to awarding the grant. Volunteer recruitment will also remain a competitive criterion in the grant selection process, regardless of the outcome on the waiver request.

An applicant requesting an alternative match requirement or a waiver of match due to lack of resources at the local level, must request a waiver before submitting its application for funding. This will enable applicants to include an appropriate budget with their grant application. Applicants applying through a State commission will be required to request waivers from the Corporation through the commission. The Corporation will address the process for obtaining a waiver in the applicable grant application instructions.

Considering Similar Program Models Together

In applying the selection criteria, the Corporation will ensure, to the maximum extent possible, that similar program models are evaluated together. This will help promote equity and fairness. One commenter strongly supported this approach. A different commenter requested a definition of "similar program models." Another commenter asked the Corporation to clarify how it will consider programs together. As a general matter, the Corporation defines its different program models according to the list of statutory program models included in § 122(a) of the NCSA. When an organization applies to the Corporation, it must self-identify which program model best describes its proposal. To the extent practicable, the Corporation then groups programs together on review panels, first by program model, such as youth corps or professional corps, and then, if possible, by other factors such as program design (e.g., statewide initiative or intermediary), member model (e.g., individual placement or team-based), issue area (e.g., environment or tutoring) and geographic area to be served (e.g., urban or rural). The more applications the Corporation receives in a particular competition, the more focused each review panel can be. For example, in the 2004 competition, the review panels the Corporation used included a panel reviewing proposals from campus-based professional corps, one reviewing community corps statewide initiatives, and two panels looking at community corps team-based programs focused on independent living. In addition to looking at like-programs together, this process allows us to ensure that we fund a broad and diverse portfolio of programs.

Information Outside the Application (§ 2522.470)

The proposed rule described in detail relevant information outside of the grant application that the Corporation may consider in making grant decisions. A few commenters asked how the Corporation would consider each document in the selection process. Two commenters argued that considering supplemental documents would create an unlevel playing field and could "appear to be an advantage to a more sophisticated sponsor, or, again, to discourage new small community-based organizations." One of these commenters recommended that, if the Corporation does consider additional documents, the Corporation should only use documents provided by the applicant and should clearly identify how the document will be scored. One commenter asked the Corporation whether the documents on this list will be used to supplement information in an application, or just to verify

information. Another commenter recommended that the Corporation clarify what information it will consider and the weight it will give to the information.

The Corporation will not supplement an applicant's proposal with information that is not included in the proposal except to clarify or verify information as described below—to do otherwise could create an unlevel playing field and would be contrary to the Corporation's practice that an applicant may not submit supplemental material after the application deadline. Nor will the Corporation score any additional information it may consider. The primary purpose for obtaining information outside the application is to clarify information that is included in the applicant's proposal and to verify assertions made in an applicant organization's proposal, including engaging in due diligence to ensure that the applicant organization can appropriately manage Federal funds. The Corporation will not lower an applicant's score, for example, based on the quality of its Web site—however, the information on the Web site may, in certain circumstances, clarify an organization's structure, shed light on an organization's history, or provide other information that validates data in the application. To clarify the Corporation's intent with respect to considering information outside of the grant application, the final rule includes specific language in § 2522.470(b) stating that the Corporation may consider this information only to clarify or verify information in an application, including engaging in due diligence.

In addition, the Corporation has pared down the list of information sources from 21 items to 11. Several of the individual items listed in the proposed rule have been subsumed into single broader categories. The Corporation removed the financial management survey from the list because the Corporation does not use the survey to make grant decisions. Rather, the Corporation uses it to assess the training and technical assistance that approved applicants may need to establish appropriate systems for managing Federal funds.

One of the information sources in the proposed rule was reports from the Corporation's Office of Inspector General (OIG). One commenter suggested that the Corporation only consider final OIG reports because issues raised in draft reports often are resolved before the IG issues its final report. The Corporation does not believe it should be precluded from considering any information the OIG might make available to the Corporation regarding prospective grantees, particularly information that might impact a prospective grantee's ability to manage Federal funds or operate an AmeriCorps program. Reports, whether draft or final, contain information that the Corporation may properly consider even before a final report is issued. However, we recognize that a final report might have more reliable information than a draft report, and we intend to give appropriate consideration based on the specific circumstances surrounding the report. The Corporation has amended the language in § 2522.470(b)(4) (2522.470(b)(6) in the proposed rule) to clarify that the Corporation may consider any internal agency information, including information from the OIG.

One commenter suggested that the Corporation replace the list of outside information with language that states that "the Corporation conducts due diligence on prospective applicants," including examining "financial and programmatic information as well as [an applicant's] previous experience operating Corporation programs as applicable." As discussed above, the Corporation has added language to the final rule that speaks to the Corporation using the information described as a part of conducting due diligence on applicants, but the Corporation believes that including a list provides more clarity and specificity than simply stating the Corporation will undertake due diligence activities.

If the Corporation denies an application for funding based on outside information that is at variance with information in the application, the Corporation will inform the applicant, through the Corporation's feedback process, of the specific information the Corporation considered.

Applicants Eligible for Special Consideration (§ 2522.450)

In the NPRM, the Corporation indicated that, after we apply the basic selection criteria, we may apply one or more of the Corporation's selection priorities. The NPRM also indicated that the Corporation may announce additional priorities in the Notice of Funding Availability (NOFA), or other notice to the public. Our intent, however, in codifying the selection priorities in these regulations was to provide transparency and baseline consistency for current and prospective grantees. The list of selection priorities in the proposed rule reflects several long-standing priorities as well as a smaller number of new priorities that we believe are appropriate.

Three commenters asked the Corporation to clearly identify how it will apply selection priorities or provide "special consideration" to programs under § 2522.450. One commenter was concerned that many programs address more than one program activity and recommended that the final rule reflect that. The Corporation's goal in giving special consideration to certain program models or activities is to ensure that our portfolio of programs includes, to the extent possible, a meaningful representation of programs addressing those priorities. In each competition, the number of proposals that receive special consideration will vary depending upon how many high-quality applications the Corporation receives that address the enumerated priorities. The Corporation has amended the language in the final rule to clarify that the Corporation may give special consideration to ensure that its portfolio of programs includes a meaningful representation of programs that address one or more of the enumerated priorities.

One commenter supported adding homeland security to the list of national priorities, as long as homeland security-related activities were not required for all programs. As stated above, the Corporation will ensure that its portfolio of programs includes a meaningful representation of programs that address homeland security, but is not requiring all programs to engage in homeland security activities, or any of the other activities included on the list for special consideration.

One commenter supported the inclusion of lower-cost professional corps programs (§ 2522.450(a)(2)) on the list for special consideration because it will encourage the development of more high-quality professional corps programs. Another person commented that States find it difficult to develop programs from community organizations, including faith-based organizations, because of the complicated application process and the lack of State resources to coach applicants through the process. Consequently, this commenter found the priority for such programs somewhat meaningless. The Corporation acknowledges that many community organizations may find the AmeriCorps structure and process challenging. Nonetheless, the Corporation hopes that special consideration for this group of applicants will encourage more such programs to accept this challenge and apply for funding. In addition, the special consideration for community organizations, including faith-based organizations, (§ 2522.450(a)(1))

includes both programs operated by these types of organizations, and programs that do not have these characteristics themselves, but that support the efforts of community organizations, including faith-based organizations, to solve local problems. This means that an intermediary, for example, that includes significant service or placements with community organizations, including faith-based organizations, would fall within this category of programs eligible for special consideration. The Corporation hopes that larger grantees will bring on as sites or sub-grantees other community organizations, including faith-based organizations, that are unable themselves to apply directly for funds.

One commenter noted that the proposed rule created a preference for faith-based organizations over secular organizations by providing special consideration to "an organization of any size that is faith-based" but limiting the analogous special consideration to only "small community-based organizations." To avoid this, the Corporation has amended § 2522.450(a)(1) to remove the reference to "small." The Corporation has also amended the language in this section of the final rule to refer to "community organizations, including faith-based organizations," rather than "faith-based and community-based organizations," as was used in the proposed rule.

One commenter opined that any religion-based criterion or preference in the grant selection process is unconstitutional and therefore should be eliminated from the final rule. Another commenter opposed faith-based organizations receiving a preference over secular programs because secular programs are more likely to be subject to non-discrimination laws. In including a priority for community organizations, including faith-based organizations, the Corporation is not carving out funding exclusively for faith-based organizations. Providing special consideration for community organizations, including faith-based organizations, is not including any religion-based criterion in the selection process—it is merely a way to ensure that the Corporation's portfolio includes a meaningful representation of programs operated by or reaching community organizations, including faith-based organizations. The Corporation has acknowledged that many community organizations may find the AmeriCorps structure and process challenging, and hopes that providing special consideration for this category of applicants may make it more worthwhile for this type of organization to apply for AmeriCorps funding.

One commenter recommended that special consideration be given to programs that address a State priority. Section 2522.460 of the proposed rule, mirrored in the final rule, addresses the circumstances under which the Corporation will give special consideration to programs that address a State priority, rather than one of the Corporation's priorities.

The Corporation has added "disadvantaged youth" to § 2522.450(b)(1) to better align that selection preference with the Corporation's strategic goal of addressing the needs of that population. In addition, the Corporation has added programs that will be conducted in rural communities and in severely economically-distressed communities to the list in § 2522.450(c) to reflect the Corporation's goal of expanding the presence of AmeriCorps in those communities. To align our selection criteria with the Corporation's strategic goals, the final list of programs eligible for special consideration includes programs that increase service and service-learning on higher education campuses in partnership with their surrounding communities, and programs that foster service opportunities for baby-boomers. Finally, the Corporation has more clearly defined in § 2522.450(b)(8) the types of community-development programs that may receive special consideration.

State Commission Rankings of Competitive Proposals (§ 2522.465)

The final rule mirrors the proposed rule in requiring State commissions to prioritize their State competitive proposals in rank order to help inform our selection process. The Corporation originally included this provision in response to State commission feedback that the Corporation sometimes did not fund proposals that a State considered its strongest or most competitive. The Corporation, however, had no way to know which proposals each State felt were most worthy of competitive funding and, thus, was unable to take that into consideration in the selection process.

The Corporation received several comments relating to this new requirement. One commenter strongly supported State rankings because States are in a better position to know the local needs than anyone else. On the other hand, two commenters opposed State rankings based on the increase in time and effort it will take at the State level, and the uncertainty of whether the Corporation will abide by the rankings. Several commenters expressed concern over the Corporation's lack of specificity about how and when the Corporation would use the rankings, and what criteria States should use in ranking the proposals.

The Corporation intentionally did not specify how States should go about ranking their proposals, in an effort to give maximum flexibility to each State to decide what is important to that State. The Corporation understands that each State may rank its proposals based on different criteria and different priorities. The Corporation expects States to rank their proposals based on the relative quality of the proposals. In providing the rankings, a State will have the ability to summarize the process and criteria it used in ranking its proposals.

With respect to how and when the Corporation will use the rankings, the proposed rule stated that the Corporation "may consider" them, and made clear that we would not necessarily be bound by them in making grant decisions. Again, the State rankings will not be determinative or definitive. However, the Corporation will use them as a way of checking against potential disparities in the peer review process to ensure appropriate treatment for a program that a State highly values. For example, if a proposal that a State has ranked very high scores very low in peer review, the Corporation may move that proposal to staff review to ensure that the peer review scores were, in fact, appropriate. If the staff review agreed with peer review, the proposal would not move forward, despite its top ranking from the State. The Corporation also plans to use the rankings towards the end of the selection process to assist us in determining the best funding package for each State. The Corporation does not believe it necessary to amend the regulatory language to reflect this. The only change in the final rule is to clarify that the Corporation "will," rather than "may" consider rankings.

In the proposed rule, the Corporation indicated that we may, in the future, choose to limit the number of proposals any one State may submit for State competitive funding to streamline the selection process and make optimal use of outside peer review panels. One commenter opposed any such limitation. The Corporation notes that it has limited the number of proposals a State may submit in at least one past competition. The Corporation does not, however, intend to implement this limitation in the short-term, but reserves the right to do so in the future. If so, we will announce the limitation in the

appropriate NOFA or other funding announcement.

State Peer Review and Selection Processes (§ 2522.475)

In the proposed rule, the Corporation addressed questions about State commission peer review requirements and why the Corporation conducts peer reviews of proposals that State commissions may have already peer reviewed. Section 133(d)(4) of the NCSA requires the Corporation to "establish panels of experts" to review applications for funding for more than $250,000, and to consider the opinions of the panels prior to making grant decisions. Again, while the regulatory language does not specify this, the Corporation wishes to clarify that the Corporation does not require State commissions to peer review AmeriCorps State competitive proposals. The Corporation conducts peer reviews of competitive proposals at the national level to ensure equitable consideration of all applications and to comply with the NCSA. A State commission may be required, under State law, to peer review State competitive proposals, or it may choose to do so on its own. The Corporation does require State commissions to peer review their formula proposals to ensure compliance with the NCSA, as the Corporation never has the opportunity to peer review those proposals at a national level.

Two commenters strongly supported State commissions using peer reviews to decide which applications to propose for funding. One commenter suggested that if States are not required to conduct peer review processes, they will have to expend a great deal of energy to ensure fairness and objectivity in their selection process. Again, State commissions must peer review formula proposals and may use a peer review process for competitive proposals if they so choose. The Corporation recognizes that State commissions that peer review all the proposals they receive in selecting both their competitive and formula submissions, this leads to successive peer review of some applications. The Corporation, however, peer reviews all competitive proposals at the national level across all States so that we can establish a common review nationally, rather than State by State, and to comply with the statute.

In § 2522.475 of the proposed rule, the Corporation indicated that it "does not require [commissions] to use the Corporation's selection criteria and priorities" in selecting State formula grant programs or operating sites. One commenter strongly supported this policy. Two commenters, on the other hand, interpreted this language as inconsistent with the statutory requirement in 122 (b)(3) of the Act (42 U.S.C. 12572(b)(3)). These commenters read this section of the statute as requiring "universal use of the selection criteria" that the Corporation establishes for its own selection process. The NCSA does not support these commenters' interpretation. The section of the NCSA in question deals specifically with "qualification criteria to determine eligibility" for AmeriCorps grants—that is to say, who is eligible to apply—which is different from determining who ultimately is selected to receive a grant from the pool of eligible applicants. The NCSA requires each recipient of AmeriCorps funds to use the qualification or eligibility criteria that the Corporation establishes, but does not require States to use the selection criteria the Corporation develops for deciding to whom to award funds.

Note, however, that 133 of the NCSA does include a list of required criteria that both the Corporation and States must include among the selection criteria they develop. (42 U.S.C. 12585). The list includes the following required criteria: (1) The quality of the national service program proposed to be carried out; (2) the innovative aspects of the national service program, and the feasibility of replicating the program; (3) the sustainability of the national service program based on evidence such as the existence of strong and broad-based community support for the program and of multiple funding sources or private funding for the program; (4) the quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs; (5) the extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program; (6) the extent to which projects would be conducted in one of the country's distressed and neediest areas; and (7) for non-State applicants, the extent to which the application is consistent with the State-wide service plan of the State in which the projects would be conducted. The Corporation has added this list of required criteria to § 2522.475. The Corporation has incorporated all of these criteria in its selection process for AmeriCorps grants, and States must do the same.

F. Corporation Cost per Member Service Year (MSY) (§ 2522.485)

In the proposed rule, the Corporation's goal was to strengthen the Corporation's basic selection criteria, and explicitly include a program's proposed Corporation cost per MSY as a key indicator of cost-effectiveness at § 2522.435. The proposed regulations also defined the Corporation cost per MSY as the budgeted grant costs divided by the number of MSYs awarded in the grant. The budgeted grant costs exclude: (1) Child-care for individual members, for which the Corporation pays directly; and (2) the education award a member may receive from the National Service Trust after successfully completing a term of service.

One commenter felt that using the term "budgeted grant costs" could be read to include both the Corporation's share of budgeted grant costs as well as the grantee's share. The commenter suggested that the Corporation amend this section to specify that we are referring to "the Corporation's share of budgeted grant costs." The Corporation agrees with this comment and has made this change in § 2522.485 of the final rule.

As stated in the proposed rule, the Corporation will announce annually any changes in the maximum program Corporation cost per MSY. Several commenters recommended that the mandated cost of living increase be indexed with corresponding increases in the Corporation cost per MSY. Two commenters suggested that organizations be allowed to apply for an increase in funding not just for the living allowance increases, but also increases in health care expenses. One commenter recommended that the Corporation grant exceptions in the maximum Corporation cost per MSY for programs incurring exceptionally high costs for members in States with high workers' compensation premiums. In response, we note that the Corporation does not address Corporation cost per MSY by waiver; rather, we negotiate the Corporation cost per MSY for each program before awarding a grant. The Corporation sets a maximum Corporation cost per MSY for State programs to accommodate programs with inherently higher costs that make it difficult for them to meet the average Corporation cost per MSY. National Direct grantees have the ability to balance higher cost sites with lower cost sites to stay within their maximum Corporation cost per MSY. With rare exceptions, the Corporation does not believe it should fund programs whose

Corporation cost per MSY exceeds the maximum Corporation cost per MSY. That said, the Corporation does reassess annually the maximum Corporation cost per MSY for individual AmeriCorps State programs and the maximum average Corporation cost per MSY, and makes adjustments as necessary and appropriate.

We anticipate that making Corporation cost per MSY a competitive factor and gradually decreasing the Federal share of grantee costs through our sustainability efforts will, over time, create sufficient and optimum downward pressure on Corporation costs, both at the individual program level and within State portfolios, and is, ultimately, more appropriate than arbitrary maximum and maximum averages. In the short term, however, the Corporation will review annually the maximum Corporation cost per MSY and maximum average Corporation cost per MSY and consider granting a continuation or recompeting program's request to increase its Corporation cost per MSY by an amount not to exceed the statutorily-required percentage increase in its previous year's AmeriCorps member living allowance. (42 U.S.C. 12594(a)). However, the Corporation cannot, by rule, automatically index the Corporation cost per MSY to increases in the living allowance and other fixed costs, given the unpredictability of the annual appropriations process.

One commenter was concerned that the regulatory language itself did not articulate the Corporation's intent to consider increases in the allowable cost per MSY. The regulatory language establishes how an organization calculates its Corporation cost per MSY. The Corporation does not set a maximum in the regulation and, therefore, does not need to include any language about increases to the maximum.

As stated above and in the proposed rule, the Corporation will continue to hold State commissions to a maximum average, and direct grantees to a maximum Corporation cost per MSY. State commissions will calculate their portfolio's average Corporation cost per MSY by dividing the Corporation's share of the budgeted grant costs for all their AmeriCorps programs (including EAP and planning grants) by the number of member MSYs awarded across their portfolio of AmeriCorps programs. The budgeted grant costs do not include child-care for individual members, the education award a member receives from the National Service Trust for fulfilling a term of service, or non-program grant funds such as a State commission's administrative grant, disability, or Program Development and Training (PDAT) funds. We encourage State commissions to use the Education Award and Professional Corps programs and national direct grantees to use "education award only" positions within their overall national direct grant as a way to lower their average Corporation cost per MSY, while maintaining high-quality programs.

One commenter asked the Corporation to allow States to receive a fixed number of Education Award Program slots annually for them to award through their State formula process. The Corporation does not believe that dividing up the allocation of Education Award Program positions among all State commissions would be a good use of these resources at this time. In addition, Federal policy is that grants should be made on a competitive basis. The NCSA authorizes the Corporation to award formula funds and corresponding AmeriCorps positions non-competitively, but we have no similar congressional directive for Education Award Program positions and grant funds. The Corporation believes that this is a matter best addressed through authorizing legislation, rather than regulation.

In the proposed rule, the Corporation discussed the possibility of excluding planning grants from a State's calculation of its average Corporation cost per MSY. Currently, the average Corporation cost per MSY for each commission includes the formula funds they use for planning grants. Some of the input the Corporation received prior to publishing the proposed rule for comment suggested that the Corporation give States more leeway to use planning grants to foster new AmeriCorps programs by taking the cost of planning grants out of the average Corporation cost per MSY calculation for each commission. Many commenters strongly supported the idea of excluding planning grants from the calculation of program costs. As indicated in the proposed rule, the Corporation plans to study the budgetary implications of this approach over the coming year. However, we are unable to implement this measure at this time given current budget constraints.

One commenter suggested that national direct grantees be allowed to exclude funds they use to train their members from their Corporation cost per MSY calculation, in the same way that State commission PDAT funds are excluded from the commission's average Corporation cost per MSY. This commenter also suggested that grantees be allowed to exclude the costs required for in-depth program evaluation from the cost per MSY calculation. With respect to training funds, it would not be appropriate to exclude them from a national direct grantee's cost per MSY for several reasons. First, national directs often benefit from State PDAT allocations because each commission is strongly encouraged to include national direct grantees in any program development and training activities they conduct at the State level. In addition, while commissions do not include PDAT in their Corporation cost per MSY, their AmeriCorps program grants include training funds for programs, which are included in the Corporation cost per MSY calculation. Finally, the Corporation views PDAT funds as more similar to a commission's administrative grant than to program funds for purposes of calculating the commission's Corporation cost per MSY.

In response to a commenter's suggestion that evaluation costs be excluded from a program's Corporation cost per MSY, the Corporation does not agree. Evaluation is a program requirement and an essential cost of operating a successful program. The Corporation will take into account the impact of evaluation costs on a program's Corporation cost per MSY when applying the cost-effectiveness criteria in the selection process.

The Corporation will announce on its website at *www.nationalservice.gov* the annual maximum average Corporation cost per MSY for State commissions and the maximum Corporation cost per MSY for national directs. For the 2005 program year, the maximum average Corporation cost per MSY for State commissions and the maximum Corporation cost per MSY for national directs will remain at the current level of $12,400. The Corporation recognizes that the member living allowance may increase and we will review the maximum average cost per MSY annually with this and other changes to program costs, and our sustainability goals, in mind.

While we acknowledge that cost per MSY may be defined in several different ways, our methodology is intended primarily to enable grantees and subgrantees to manage Corporation costs at the program and State commission level, and to estimate the projected costs of proposed programs.

G. Performance Measures and Evaluation (§§ 2522.500 Through 2522.740)

The Corporation is continuing to build on the progress we have made in

demonstrating results, both to ensure that the Corporation continues to demonstrate the true impact of national service, and that programs continue to improve, as well as to fulfill the expectations laid out in the Government Performance Results Act of 1993, the Administration's Program Assessment Rating Tool (or PART), and Executive Order 13331 on National and Community Service Programs. The proposed rule codified the Corporation's current requirements for performance measurement, focused independent evaluation requirements on large grantees, and generally reflected current Corporation practice. In addition, the proposed rule described the relationship between performance measures, evaluations, and funding decisions. The Corporation believes that a stronger emphasis on performance measurement and evaluation will strengthen AmeriCorps programs and foster continuous improvement. In line with E.O. 13331, emphasizing performance measures and evaluation will also help us identify both best practices and models that merit replication, as well as programmatic weaknesses that can be corrected most effectively when identified early.

The proposed rule distinguished performance measurement from program evaluation, while making explicit that grant funds used to pay for either activity are not considered "administrative costs" or subject to the 5 percent statutory cap on administrative costs. A grantee would be allowed to use grant funds to pay for performance measurement and evaluation up to the approved amounts for such activities in its grant. These provisions remain largely unchanged in the final rule.

Several commenters viewed the proposed rule as increasing performance measures and the burden on grantees. While the proposed rule and final rule emphasize performance measures, neither the proposed rule, nor the final rule, is intended to increase the burden on grantees. The final rule generally codifies existing Corporation policy in this area.

One commenter was concerned that the Corporation does not use the data it collects for any type of national reporting. One of the Corporation's goals is to identify the best way to report the data that the Corporation collects to our grantees and the public. Currently, individual program officers use this information to assist in managing the grants and directing programs to the appropriate resources, as well as to assess program impact and effectiveness. The Corporation provides information to the public using the data submitted by grantees and programs in the Corporation's annual Performance and Accountability Report (*www.cns.gov/about/reports.html*). Also, the State Profiles and Performance Report presents performance results achieved by the Corporation's national and community service programs (*www.cns.gov/pdf/research/CNCS-PerformanceReport-Ind.pdf*). This recently released report is the first report offering comprehensive performance data by State and program. Finally, the Corporation is in the process of redesigning its Web site so that members of the public and grantees can more easily negotiate the site and locate pertinent information and reports. The Corporation views this as an ongoing process of increasing the availability and transparency in our reporting of performance data. The Corporation will continue to collaborate with grantees to make better use of data and to ensure that a key benefit of all reporting is the opportunity to see data reflected back in broader context.

One commenter opposed the Corporation's performance measures requirement because, in this commenter's opinion, they have made applying for AmeriCorps funds more confusing and have increased the complexity and detail of reporting. This commenter recommended returning to simple objectives or using simplified performance measures.

The Federal government, as a whole, is moving towards performance measurement and reporting on outcomes. The Corporation does not believe that the previous system of reporting on objectives provided enough detail or substance to show the true impact national service has in our communities across the nation.

Defining Performance Measurement, Outputs, and Outcomes

In sections 2522.520, 2522.570, and 2522.700 of the proposed rule, the Corporation defined the terms performance measurement, output indicators, intermediate-outcome indicators, and end-outcome indicators. One commenter found the use of the word "indicator" in these definitions misleading, given that the rest of the rule does not refer to indicators, and suggested that the Corporation resolve the mismatch in the final rule. Another commenter suggested that the final rule broaden the definitions to include references to community changes in addition to changes in the lives of community beneficiaries. The Corporation agrees with both these comments, and has (1) removed the word indicator from the above-referenced sections, and (2) broadened the language of the definitions in the above-referenced sections to include changes to the community.

National Performance Measures (§ 2522.590(b))

While the proposed rule allowed an applicant organization to propose and negotiate performance measures unique to the applicant's program, the rule also provided that the Corporation would establish one or more national performance measures on which all grantees would have to report. The proposed rule indicated that the Corporation would establish a national performance measure on volunteer leveraging, may establish performance measures of member satisfaction, and will develop any national standardized performance measures in consultation with AmeriCorps grantees.

In general, most commenters supported the concept of developing national performance measures for all programs. However, several commenters noted potential concerns, such as the ability of these national measures to reflect the diversity of programs and approaches, the ability of programs to set their own measure of how well they are meeting needs in their communities, the need to preserve creativity and innovation of local programs, and the potential for programs to be redesigned to fit a certain model based on the national performance measures, rather than being designed to meet community needs. Several commenters suggested that the Corporation consult with grantees in developing any national performance measures.

The Corporation does intend, as stated in the proposed rule, to develop a limited number of national measures applicable to all (or most) programs, such as the number of community volunteers leveraged, hours served by community volunteers, and member-related measures, in addition to the program-nominated national performance measures. The Corporation also plans to develop other standard national measures that might apply only to particular types of programs or activities. The Corporation's goal in doing this will be to diminish the burden on grantees to develop measures in these areas, and to provide the Corporation with consistent measures on which to report at the national level. This process of developing national outcome measures for all programs to reflect their impact on communities or the lives of service recipients is a long-term project, given the diversity of programs and issue areas. Even within

a single issue area, such as youth development or environment, the diversity of programs addressing different needs and interests makes it challenging to develop uniform outcome measures at the national level without significant dialogue with State commissions and our other service partners. Finally, the Corporation notes that national measures will not replace the need for or the ability of programs to show progress in areas of local concern through program-nominated measures. The Corporation intends, as reflected in the proposed rule, to engage the field in developing any national performance measures, through an open public process, and plans to finalize member-related national measures within 18 months of publication of this final rule. The Corporation will continue to dialogue with the field in developing these and other national measures over the coming months and years. The Corporation, does not, however, see a need to change the language in § 2522.590(b) of the proposed rule.

Measuring Performance of the "Primary" Service Activity (§ 2522.580)

Section § 2522.580(b) and (c) of the proposed rule stated that performance measures need not cover the scope of an entire program, but should give a clear indication of a program's primary purpose and objectives. Section 2522.580(c) also required programs to include at least one end-outcome measure that captures the results of the *program's primary activity.*

Several commenters noted that their programs, mostly intermediary models, do not have a primary activity, but rather engage in many different activities in different issue areas. One commenter suggested that the rule define the elements of an intermediary program and accept performance measures that speak to an intermediary's overall goal. Another commenter recommended embracing the overall goal of the intermediary program to allow programs to collect performance measurement across service activities focused on areas such as large-scale capacity building.

If at all possible, intermediaries should report on the activities of their operating sites or subgrantees. We recognize, however, that in some cases this is not feasible. If it is not possible for an intermediary to identify a primary or significant area of activity, the Corporation is open to considering other measures that relate specifically to the overall mission and focus of the intermediary organization itself. For example, an intermediary organization with members placed at multiple unaffiliated sites, through which members participate in many different activities in many different communities, might be able to submit a measure relating to the extent to which the intermediary is building the capacity of grass-roots organizations to serve their communities. For another program in which members engage in many different activities, the program may nonetheless be able to identify one activity that makes up a significant part of the program's service activities, and report an end-outcome on that activity. To clarify our intent in this regard, the Corporation has incorporated what was paragraph (c) of § 2522.580 in the proposed rule into paragraph (a)(1) of that section, and changed the language to capture the results of "the program's primary activity, or area of significant activity for programs whose design precludes identifying a primary activity."

The Corporation is also modifying the requirement that only an end-outcome capture the program's primary activity or area of significant activity. The Corporation has concluded that, as a general matter, a program would likely need to start with an output and an intermediate outcome, in order to be able to report on an end outcome. Furthermore, the Corporation has an interest in seeing at least one set of performance data on a program's primary activity or area of significant activity. Consequently, the final rule requires that grantees submit at least one set of aligned measures (described in more detail below), rather than just an end-outcome, on the program's primary activity or area of significant activity. Programs should note that, in addition to the minimum requirements, they may submit additional relevant measures of their performance in other issue areas.

One commenter opined that end outcomes, in general, are not reasonable in AmeriCorps because of the annual turnover of members. This commenter recommended that the Corporation not require end outcomes. The Corporation has made available guidance and technical assistance materials to the field on how programs can achieve end-outcomes, not within a member service year, but within the grant period (See *www.nationalservice.gov/resources* for information on toolkits, available Corporation assistance, and helpful websites.) While programs may not be able to achieve some end-outcomes, such as preventing air pollution, they can achieve measurable results. Youth development and education programs can assess improvements in achievement and behavior of youth tutored and mentored, environmental programs can measure changes in water pollution and improvements in lands and trails, and programs designed to develop members can achieve outcomes such as members obtaining GEDs, developing specific skills, or entering careers based on their program experience. Logic models can be very helpful tools in helping programs to identify clear and measurable outcomes and understand the steps along the way in achieving their goals, each of which can be measured and used as performance measures.

Aligning Performance Measures (§ 2522.580)

Section § 2522.580(d) of the proposed rule required programs to choose at least one set of performance measures that are aligned with one another. For example, a tutoring program might use the following aligned performance measures: (1) Output: Number of students participating in a tutoring program; (2) Intermediate Outcome: Percent of students reading more books; and (3) End Outcome: Average increase in reading level or test scores. The Corporation included this requirement to allow both service programs and Corporation staff to understand the logical connections between each step in the chain from program activity to program performance and results. As discussed above, the final rule in § 2522.580(a)(1) requires that the one required set of aligned performance measures must capture the program's primary activity or area of significant activity. The Corporation believes that this will provide a clearer picture of the extent to which programs are demonstrating results.

Several commenters noted that their programs engage in many different activities in different issue areas, and, therefore, want to submit measures in several areas rather than just one set of aligned measures in only one area. Several commenters appeared to read the provision as requiring all the performance measures of a program to be aligned and speak to the same priority—for example, if a program chooses one set of performance measures on tutoring, all its performance measures must relate to tutoring and tutoring activities. One commenter suggested revising the language to clarify that one set of aligned performance measures is the minimum requirement, but that any additional performance measures that a program submits need not be aligned.

The Corporation believes that it is important for a program to identify the

connections between activities and results, and to have information to assess performance. That is the impetus for continuing to require one set of aligned performance measures—that is to say one output, one intermediate outcome, and one end-outcome all relating to the same primary activity or priority. The Corporation does not, however, expect that all of a program's performance measures, beyond the one required set of aligned measures, will speak to the same priority, or to the program's primary activity. Nor does the Corporation require programs to submit more than one aligned set of measures. A program may, once the minimum requirement of one set of three aligned measures is satisfied, submit relevant additional measures of their performance in other issue areas that do not necessarily need to be aligned. For example, a program may submit a set of performance measures around tutoring, such as the example given above, and, in addition, provide various outputs, intermediate outcomes, or end outcomes relating to other program activities such as volunteer recruitment or support, mentoring, or member development. To make this clear, the Corporation is amending the language in § 2522.580(d) and (f) of the proposed rule (§ 2522.580(a) and (d) of the final rule) to make clear that one set of aligned measures is the minimum requirement, and that programs may submit additional performance measures that are aligned or are not aligned.

Flexibility To Change Performance Measures Over the Course of the Grant

Two commenters suggested that programs need flexibility to change measures in year two or three of a three-year grant to react to changing needs and unforeseen challenges. The proposed rule envisaged that programs would submit performance measures in the first year of their three-year grant on which they would report over the three-year period of the grant. The goal was to decrease the burden on our grantees to have to submit new performance measures each year, and to increase the value of the reporting over a longer period of time. That said, section 2522.640 of the proposed rule and the final rule specifically authorizes programs to change their performance measures, with Corporation or State commission approval as appropriate. Since this flexibility is already in the rule, the Corporation sees no need to change or add language to address this issue.

Grantees' Responsibilities in Meeting Performance Measures (§ 2522.630)

The final rule is more specific about what a corrective action plan to address performance deficiencies must include, and requires grantees to submit such a plan within 30 days of a determination that the grantee is not on track to meeting the performance measures.

Performance Measures and Funding Decisions

One commenter was concerned that the selection criteria in the proposed rule include a program's progress towards meeting performance goals in the decision of whether or not to fund the program. This commenter believed that this would result in programs lowering their performance goals to ensure that they meet them. The Corporation does not believe that this is a concern. Beyond any national performance measures that the Corporation may require of programs, the Corporation, or the State commission, will approve all other performance measures and, thus, will have the opportunity to ensure that each program is selecting ambitious performance measures upon which to report. In addition, the benefits the program anticipates and captures through performance targets are also significant elements of the selection criteria.

Evaluation

Section 131(d)(1) of the Act specifies that an applicant must arrange for an independent evaluation of an AmeriCorps national service program receiving assistance under Subtitle C of Title I of the Act, unless the applicant obtains Corporation approval to conduct an internal evaluation. The statute also authorizes the Corporation to make alternative evaluation requirements "based upon the amount of assistance" a grantee receives.

In light of these provisions, in the proposed rule the Corporation proposed revising its current requirement that all grantees arrange for independent evaluations, unless the Corporation approves an internal evaluation. The proposed rule required that only the Corporation's largest grantees—those receiving an average annual program grant of $500,000 or more—conduct an independent evaluation that covers a period of at least 5 years, and submit the evaluation results with their application for recompete funding. Our rationale for this approach was that it is burdensome to require independent evaluation for smaller grants, and, for larger grants, we wanted to give a grantee enough time to complete a rigorous evaluation, and ensure that the Corporation receives it in time to consider with a grantee's second recompete application for funding. Under the proposed rule, the Corporation would not consider for funding any recompete application from a program receiving an average annual program grant of $500,000 or more that did not include the required evaluation summary, or results, as applicable.

One commenter supported the proposed rule's approach to evaluation. Four commenters, however, opposed outside evaluations, because they use up resources that should be used in support of the program's service activities. One stated that outside evaluations are not helpful and usually lead to more questions than answers. Another noted that most programs lack the resources to develop the level of evaluation proposed and that it is difficult to pursue funding for evaluation and research.

While sensitive to the concerns of these commenters, the Corporation strongly believes in the value of independent evaluation, particularly for our largest grantees. Furthermore, the Corporation does not believe it unreasonable to require an independent evaluation from a grantee that has received over 2.5 million dollars from the Corporation, and is applying for additional funds, by the time it submits the evaluation results to us.

The Corporation also received many comments suggesting that the Corporation develop basic guidelines for assessing evaluations in the grant selection process, or that the Corporation nationalize or standardize the aggregated data to make it more useful. Several commenters suggested that the Corporation develop national guidelines on evaluation or standardized evaluation tools that programs could use for internal evaluations rather than paying for an external evaluator. Several commenters suggested that the Corporation develop national evaluation standards for all programs, while others suggested standardized evaluation criteria. One commenter recommended that the Corporation design flexible questionnaires on the data it seeks in evaluations, which would save large programs thousands of dollars through standardization.

Two State commissions recommended that the Corporation establish a national evaluation agenda with two components: (1) Competitive funds for commissions to engage in statewide AmeriCorps program evaluations, and (2) a Corporation-conducted national evaluation to assess

the impact and effectiveness of program models nationally. Another State commission suggested that the Corporation work with State commissions to perform statewide evaluations. This commenter agreed that evaluations are important for all programs, big and small, and therefore recommended requiring evaluations for all programs. Another commenter recommended funding "statewide and or national evaluations that are both cost-effective and provide potentially broader analysis and impact data." Another commenter recommended that the Corporation either provide programs the tools to conduct internal evaluations, or provide funding to offset the cost of external evaluations.

The Corporation intends to work cooperatively with grantees and other interested parties with a goal of seeking input on one or more strategies like those suggested in the comments, including, potentially, national Corporation-administered evaluations, statewide evaluations, and the development of evaluation tools and guidelines for grantees to use in performing internal evaluations. The Corporation will offer sufficient opportunity to grantees and other interested parties to provide input. In the meantime, however, the Corporation is maintaining, in this final rule, the requirement from the proposed rule that any grantee that receives an average annual grant of $500,000 or more must arrange for an independent evaluation. In anticipation of other potential evaluation strategies, however, the final rule also includes language from the NCSA that requires grantees to cooperate with requests for information for any national evaluation that the Corporation or one of its providers may conduct. The Corporation will consider relieving grantees of the requirement to conduct an evaluation if a grantee participates in national or statewide evaluations, or uses the evaluation tools the Corporation develops.

One commenter requested clarification on whether the threshold for independent evaluation is the total program budget or the Corporation share only. As stated above, the independent evaluation requirement applies to any grantee that receives an average annual grant of $500,000 or more—in this specific context, the term "grant" refers to the amount the Corporation provides in grant funds, not the total program revenues from other sources. The final rule refers to the "Corporation" program grant to make this point clear.

Independent Evaluation (§ 2522.700)

In defining evaluation in the proposed rule, the Corporation referred to evaluation as using scientifically-based research methods to assess the effectiveness of programs by comparing the observed program outcomes with what would have happened in the absence of the program. The proposed rule intended to include random assignment as one example of a scientifically-based research method, but erroneously made it appear like random assignment was the only type of method the Corporation would allow. The Corporation received many comments opposing the requirement of random assignment evaluations, and other comments requesting that we more clearly define "scientifically-based" to include other methods of evaluation other than random assignment. To avoid any confusion, the Corporation has amended the final rule to remove the reference to random assignment methods. This should make clear that a program may use any appropriate scientifically-based evaluation method it chooses.

Scientifically-based research can be broadly defined as using appropriate research design, methods, and techniques to ensure that the methods used can reliably address the research questions and support the conclusions. Scientifically based research describes research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to activities and programs.

When organizations are attempting to determine whether there is a causal relationship between their programs and observed outcomes, or whether a program caused a change for participants, they will need to employ an experimental or quasi-experimental design or demonstrate how their study design will allow them to determine causality. One of the key characteristics of experimental designs is random assignment of persons or entities to treatment (or experimental) and control (or comparison) conditions. For example, participants in the treatment condition may receive benefits or services, while participants in the control condition do not. This random assignment of persons to conditions should equalize preexisting differences between the two groups so that differences observed between the groups can be attributed to the program. If random assignment is not possible, then quasi-experimental designs can be employed. These designs rely on identifying appropriate comparison groups, and may even take measurements at two or more points in time or include multiple comparisons in order to rule out or reduce threats to validity or alternative explanations for differences between the experimental and comparison groups.

Making comparisons to similar individuals not receiving services, whether through an experimental or quasi-experimental design, is an important part of ensuring the observed program effects are attributable to the programs and not to other factors. Comparison groups can be identified in several ways, including direct methods such as collecting information for similar individuals and communities not being served, and indirect methods such as using local, regional or national data or information available from federal, State and local agencies and private and nonprofit organizations. In the absence of comparison data, programs are limited in their capacity to demonstrate the added value of their program for the individuals and communities they serve.

For example, a tutoring program that is not able to serve all of the eligible students due to excess demand may be able to randomly select students to participate in the program. If random assignment is not feasible, the program may use a quasi-experimental approach to compare the achievement or literacy scores of the students served with those of similar students in nearby communities and schools. Alternatively, the program may compare students to benchmark information reported by local schools, school districts, or even State and national data on education achievement. A program may be able to successfully assess program results by comparing the achievement of the students they serve at multiple points in time (baseline, during the program, at the end of the program) against an appropriate comparison benchmarks. While not as rigorous as a random assignment design, quasi-experimental comparison group designs can provide reliable evidence of program effectiveness.

One commenter opposed the requirement that programs be evaluated in depth against a similar population that does not receive the benefits or services of the AmeriCorps program. This commenter believed that such a group is hard to find, and that data gathering would be difficult and error-prone. The Corporation disagrees. As discussed above, making comparisons to similar individuals not receiving services is an important part of ensuring the observed program effects are attributable to the programs and not to

other factors. Many programs attempt to create changes in individuals and communities, but can not provide evidence that any observed changes are due to the program. For example, because children learn and develop over time, youth development and education programs need to be able to measure the effects of their programs and compare them against the learning and development that occurs in other children. Comparisons can be identified in several ways, including direct methods such as collecting information from similar individuals or communities not being served, and indirect methods such as using local, regional or national data and information available from federal, State and local agencies, and private and nonprofit organizations. In the absence of comparison data, programs are limited in their ability to demonstrate the added value of their program for the individuals and communities they serve.

Evaluation Requirements for Smaller Grantees

In the proposed rule, the Corporation encouraged (but did not require) grantees who receive under $500,000 in grant funds per year, to perform independent evaluations and indicated that the Corporation would consider the results of these evaluations when making decisions on an organization's application for funds. Several commenters found the term "encourage" ambiguous and felt it created a de facto requirement. At least one commenter suggested that the Corporation remove that requirement. One commenter suggested that the rule either (1) require only that programs "show improvement", but not necessarily a scientifically-based evaluation, or (2) permit programs to submit information for statewide evaluation.

The Corporation continues to believe that independent evaluations are intrinsically stronger and, often, more useful, than internal evaluations. That being said, the Corporation has removed the language encouraging smaller grantees to arrange for independent evaluations. The Corporation does believe that all effective programs need to continuously improve their results for both participants and the people they serve, and therefore expects all grantees to perform some type of evaluation as part of their programs, in accordance with the NCSA. Consequently, the Corporation is including in the final rule the statutory minimum requirement of an internal evaluation for smaller grantees.

Five-Year Timetable for Evaluations

At least one commenter found the proposed rule unclear on when a grantee will be expected to produce an evaluation. The Corporation is removing the requirement that an evaluation be conducted every 5 years. Rather, the Corporation will require each grantee to submit a summary of its evaluation plan with its first recompete application following the effective date of this provision, and the full evaluation results with its second recompete application for funding. For example, if a current grantee recompetes for funding in 2006, it will be required to submit with its application a summary of its evaluation plan or progress to date. If the grantee again recompetes for funding in 2009, it will have to submit the completed evaluation with its recompete application at that time. The evaluation must cover a minimum of one year, but may cover longer periods. This applies for both internal and independent evaluations.

Consideration of Evaluations in Selection Process

The proposed rule stated that the Corporation will consider in the grant selection process the results of any evaluation a grantee submits. One commenter strongly recommended that external professional evaluators review the evaluations that grantees submit, particularly if the evaluations will have a major impact on future funding. The Corporation agrees that this is a promising idea and will consider it in the future, funding permitting. The Corporation will use an evaluation that a grantee submits to inform our consideration of the selection criteria. The evaluation itself will not receive any score in the selection process.

Costs of Evaluation

Two commenters asserted that the independent evaluation requirement for large programs is an unfunded Federal mandate, through which the Corporation is forcing a program to decide how to pay for program evaluation for Corporation program operations. Several commenters noted that the independent evaluation requirement for large programs is an undue burden on those programs as compared with smaller programs. These commenters also noted that the requirement would increase the costs and Corporation cost per MSY for larger programs. Another commenter noted that, while evaluation is important, it is costly and will likely lead to programs cutting costs on other quality elements of the program. This commenter, therefore, recommended that the Corporation bear the costs of evaluations beyond each program's budget, and that this cost not be counted in the total Corporation cost per MSY or operational costs of the program. Several commenters recommended that the Corporation pay for evaluation costs, or at the very least a percentage of evaluation costs for each program. As discussed earlier, the Corporation does not believe it appropriate to exclude evaluation costs from a program's Corporation cost per MSY. The Corporation will, however, consider the impact of evaluation costs on a program's Corporation cost per MSY in the context of applying the cost-effectiveness criteria in the grant selection process.

H. Qualifications for Members Serving as Reading Tutors and Requirements for Tutoring Programs (§§ 2522.900 Through 2522.950)

E.O. 13331 directs that school-based national and community service programs "should employ tutors who meet required paraprofessional qualifications, and use such practices and methodologies as are required for supplemental educational services." The Corporation believes strongly that it is important to maintain consistency with the balance struck by the No Child Left Behind Act (NCLBA), which, on the one hand ensures that children who need tutoring are receiving the best possible support, and, on the other hand ensures AmeriCorps' continued support for our education system.

We therefore also strongly believe that these rules should not create burdens on AmeriCorps members and programs that are not already imposed by the NCLBA. Thousands of AmeriCorps members are providing invaluable support to children through a range of activities that the NCLBA has specifically exempted from coverage. To be consistent with the NCLBA, in setting tutor qualifications in the proposed rule, we narrowly defined "tutor" to include only individuals whose primary goal is to increase academic achievement in core subjects through planned, consistent, one-to-one or small-group activities and sessions, that build on students' academic strengths and target students' academic needs. We did not intend to establish qualifications for AmeriCorps members who engage in other school-related support activities, such as homework help provided as part of a safe-place-after-school program.

The proposed rule also confirmed that the qualification requirements for tutors and other paraprofessionals under the NCLBA apply to tutors who are

employees of the Local Education Agency (LEA) or school, as determined by the State, but do not apply to AmeriCorps members serving as tutors under the sponsorship of an organization other than the school district.

Under the NCLBA, paraprofessionals (including tutors) who provide instructional support in Title I schools must have a secondary school diploma or its equivalent and must have: (a) Completed two years of study at an institution of higher education; or (b) Obtained an associate's or higher degree; or (c) Met a rigorous standard of quality and be able to demonstrate the appropriate and relevant job skills through a formal State or local academic assessment. For a member serving as a tutor, *other than one employed by the LEA or school*, the proposed rule required either that the member has a high school diploma (or its equivalent), or that the member passes a proficiency test that the grantee has determined effective in ensuring that the member has the necessary skills to serve as a tutor. A member serving as a tutor would also have to successfully complete any pre- and in-service specialized training required by the program.

In addition, the proposed rule required tutoring programs to show competency to provide tutoring service through their recruitment, specialized training, performance measures, and supervision.

AmeriCorps Members as "employees" and Application of the NCLBA

Many commenters expressed concern over the characterization of AmeriCorps members as "employees" of, or "hired by" the LEA or school, particularly given that the NCSA specifically states that members are not to be considered employees of the programs with which they serve. Some of the commenters were concerned that identifying members in this way could bring them under the auspices of other employment and labor laws such as those dealing with minimum wage.

The Corporation used this terminology because that is how the U.S. Department of Education has characterized the distinction between those AmeriCorps members who will be covered by the NCLBA and those who will not. In its regulations implementing the NCLBA, the U.S. Department of Education defines a covered paraprofessional as any paraprofessional "hired by the LEA". 34 CFR 200.58(a)(1)). In subsequent guidance on implementation of its rules, the Department of Education specifically addressed the application of NCLBA paraprofessional requirements to AmeriCorps members working in schools as follows:

> The National and Community Service Act states that AmeriCorps volunteers are not considered employees of the entities where they are placed (42 U.S.C. 12511 (17B)). Unless AmeriCorps volunteers are considered employees of a school district under State law, the paraprofessional requirements in section 1119 (see items B–1 and B–5) do not apply. U.S. Department of Education, Title I Paraprofessionals, Non-Regulatory Guidance, March 1, 2004.

Whether an AmeriCorps member is considered an employee under State law is a State law question, and not a Corporation determination. Over the years, there have been occasions when a particular State considered AmeriCorps members serving in that State to be employees for some purposes, such as minimum wage and overtime, or unemployment insurance. To the Corporation's knowledge, however, no State currently considers AmeriCorps members serving in schools to be employees for purposes of the NCLBA. In light of the confusion caused by the proposed rule, however, the Corporation is amending the language in this final rule to make clear that only those members considered to be hired by the LEA or school *under State law* must comply with NCLBA paraprofessional requirements.

Several commenters interpreted the proposed rule as extending NCLBA coverage and its requirements to AmeriCorps members who are not currently covered under that law. This was not the Corporation's intent. The Corporation's intent was simply to reiterate the current U.S. Department of Education rules on which AmeriCorps members may be subject to NCLBA. The Corporation is not imposing NCLBA requirements beyond what the U.S. Department of Education already requires.

Grantees should note that the NCLBA paraprofessional requirements apply to any individual who meets the definition of paraprofessional, including tutors. Again, the Corporation would expect grantees to determine whether its AmeriCorps members are covered paraprofessionals under the NCLBA and, therefore, subject to NCLBA requirements. If they are not covered paraprofessionals subject to NCLBA requirements, the grantee must then determine whether they are tutors, as defined in this rule, and therefore subject to the qualifications established by this rule.

One commenter indicated that at least six States have opted out of the NCLBA and sixteen more have pending legislation to opt out. As stated above, this rule will not impose NCLBA requirements where they are not already applicable. States that have opted out of NCLBA requirements by choosing not to receive Title I Federal education funds will have only to ensure that any members serving as tutors, as defined in this regulation, meet the qualifications established by this regulation—*i.e.* a high-school diploma or its equivalent, or successful completion of a proficiency test—and provide training and supervision as required in this regulation.

Definition of "Tutoring"

As discussed above, the proposed rule narrowly defined "tutor" to include only individuals whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group activities and sessions, that build on students' academic strengths and target students' academic needs.

One commenter recommended that the Corporation clarify whether the definition of tutoring applies only in the K–12 years, or whether it would apply to a member "tutoring" pre-school children. Another commenter sought clarification on whether tutoring, as defined, in this regulation included adult-learning. The Corporation's intent, in this regulation, was to impose requirements on tutoring that occurs during the K–12 school years, as a parallel requirement to the NCLBA. We did not intend to extend the tutor qualification requirements to activities involving pre-kindergarten students or adults. Consequently, the Corporation has amended the regulation to make clear that tutoring in this regulation relates only to children in grades kindergarten through twelfth.

AmeriCorps Tutor Qualifications

As discussed above, for a member serving as a tutor, *other than one employed by the LEA or school* as determined by State law, the proposed rule required either that the member has a high school diploma (or its equivalent), or that the member pass a proficiency test that the grantee has determined effective in ensuring that the member has the necessary skills to serve as a tutor. A member serving as a tutor would also have to successfully complete any pre- and in-service specialized training required by the program and screening requirements.

Two commenters found the proposed rules for tutor qualifications acceptable, and one of the two thought the increased qualifications would be

beneficial. One commenter commended the proposed rule because it established necessary standards and provided the flexibility for programs to test proficiencies appropriate for the local population and educational priorities. One commenter supported the rule as applied to non-profits and noted its importance in that it resolves issues raised by the NCLBA. On the other hand, one commenter criticized the rule as "unnecessary and burdensome," and unbeneficial for innovative programs designed to meet community needs. Fifteen commenters expressed concern that they would not be able to recruit sufficient numbers of tutors who qualify under the proposed rule. Many commenters were in favor of some training and education requirements for tutors, but disagreed with the standards in the proposed rule. Some commenters believed that their tutoring programs are already successful with the tutors they currently recruit, train, test, and supervise, and therefore did not see the need for additional Corporation requirements. One commenter was concerned that this rule would lead to different member qualifications for tutors "hired by LEAs" versus those "hired by" non-profits. As discussed above, under current law and in the absence of an AmeriCorps regulation, there are already different standards for tutors considered by State law to be "hired by the LEAs" than other AmeriCorps tutors, as only those "hired by the LEAs" are subject to the paraprofessional requirements under the NCLBA. The Corporation is merely imposing some additional limited qualifications requirements on the group of tutors not covered by the NCLBA.

One commenter was also concerned about having different requirements for tutors depending upon the State law where the members were serving, and the impact that would have on multi-State programs. In the Corporation's view, this is no different than any issue that might vary for multi-State programs depending upon State law. For example, some States cover AmeriCorps members under unemployment insurance laws, while others do not; some States cover members under workers' compensation, while others do not. Any multi-State program with members serving in States covered by different laws has to deal with members potentially being treated one way in one State and another way in a different State. The application of the NCLBA on a State-by-State basis is no different.

One commenter expressed concern over the increased training costs necessary to meet the new training requirements for members serving as tutors. The Corporation is aware that programs will need assistance in ensuring that tutors receive appropriate training and this issue will be part of our training and technical assistance strategy in the coming year.

Four commenters recommended that the current standards for tutors be maintained. One of these commenters supported requiring the high-school diploma or its equivalent, and successful completion of pre- and in-service training, but no proficiency test. One commenter recommended revising the rule to permit "qualified AmeriCorps members [to serve] as tutors without the requirement for specific levels of education or expensive competency tests." In fact, the vast majority of AmeriCorps members have a high-school diploma or its equivalent before they begin serving. So no proficiency test will be necessary for most AmeriCorps members serving as tutors. The Corporation did not, however, want to limit the ability to tutor only to those with a high-school diploma or its equivalent, as we understand that some programs have members serving who do not have a high-school diploma or its equivalent but who, nonetheless, are competent tutors. Our intent was to ensure a minimum standard that all tutors must meet, while leaving flexibility to programs to engage as tutors individuals who would not qualify under a "high-school diploma or its equivalent" standard. We believe that the proficiency test accomplishes the goal of establishing this minimum requirement for the small number of members who may not have a high-school diploma or its equivalent. (We note that the equivalent of a high-school diploma includes more than just a GED, and we have included a technical amendment to the final rule in § 2510.20 to reflect the definition of recognized equivalent of a high-school diploma.)

One commenter questioned which proficiency test programs should use to qualify tutors and who would approve the test. The commenter stated that local LEAs and schools do not currently have an appropriate test for measuring proficiency and that the "on-line ParaPro test" can be very challenging. The Corporation does not expect programs to necessarily use the test that paraprofessionals must pass to qualify under the NLCBA. The program may use the test that it deems appropriate to test the proficiency of its members, be it in math or English, or whatever core subjects the member may tutor. To select skill exams or tests, programs should consider seeking input from professionals in their local area. State Departments of Education, Adult Basic Education, or GED programs can provide names and sources of tests commonly used for basic subjects or skills at the level the program requires.

Potential proficiency tests might also include tests used by the U.S. Department of Education to enroll students who do not otherwise have a high-school diploma or its equivalent on what is known as an "ability-to-benefit basis." The U.S. Department of Education periodically publishes the list of these approved tests and acceptable passing scores in the **Federal Register**. You may read the most recent list at 69 FR 26087 (May 11, 2004). We reiterate that a program is not required to use these tests. The program must determine an appropriate proficiency test given the focus of the program, the members recruited, and the population receiving the tutoring. The qualifications requirements for tutors in the final rule mirror the language of the proposed rule.

Tutor Program Requirements (§ 2522.940)

The proposed rule required tutoring programs to show competency to provide tutoring service through their recruitment, specialized training, performance measures, and supervision. One commenter commended the program requirements because they establish necessary standards and provide programs with implementation flexibility. This provision has not changed in the final rule.

I. Non-Displacement of Volunteers (§ 2540.100)

The Corporation's focus has consistently been, pursuant to the Act, to fund programs meeting needs that would otherwise go unmet in their communities. The non-displacement rules are one way to ensure that programs are meeting unmet needs, rather than needs that employees or volunteers are meeting already. In addition, E.O. 13331 directed national and community service programs to avoid or eliminate any practice that displaces volunteers. Consequently, the proposed rule stated that the service of an AmeriCorps member must complement, and may not displace, the service of other volunteers in the community, including partial displacement such as reducing a volunteer's hours.

One commenter supported the new provision on volunteer displacement. Three commenters requested that the Corporation clarify in the final rule its definition of volunteer displacement,

and how the Corporation and grantees will monitor volunteer displacement.

Six other commenters did not support the provision and thought it may have unintended consequences. One of the reasons proffered was that programs often use AmeriCorps members to transition from an administrative design that is no longer able to meet community demands for service. In one commenter's State, AmeriCorps members put "legs under recruitment and outreach plans that were formerly the domain of one or two community volunteers. The result is more volunteers for the organization." One commission noted that the proposed rule language will focus attention on whether a particular volunteer function is assigned to an AmeriCorps member, rather than whether the AmeriCorps member's presence and work have resulted in a stronger community volunteer program. This commenter suggested that the Corporation focus the prohibition on the extent to which an AmeriCorps member's participation in a program results in "either fewer community volunteers or fewer hours of volunteer service by the organization's community volunteers." Five other commenters, including two commissions, made similar comments.

The Corporation does not believe that a focus on the number of volunteers or volunteer hours is appropriate, primarily because of the burden it would place on organizations to track those numbers. In fact, the final rule omits the reference to volunteer hours, but maintains the rest of the language from the proposed rule.

The Corporation wants our programs to build on, rather than substitute for, service that is already occurring in the non-profit world. We do not want programs to use AmeriCorps members for activities that a community volunteer is already performing. However, we will consider whether in bringing on AmeriCorps members, the grantee is launching new sites or new service activities, expanding the role of community volunteers in the program, improving the caliber or diversity of members enrolled, or promoting other strategies to expand the program or enhance its impact in the community.

Monitoring and enforcement of this prohibition will occur as they currently do with respect to displacement of employees: The Corporation and grantees will be alert to the issues of displacement of volunteers in the selection process; the Corporation will include non-displacement of volunteers as one of the assurances grantees will make when accepting a grant; Corporation program officers will ask a program to demonstrate compliance if they have concerns; and, if a community volunteer raises displacement as an issue, the volunteer will have the option of filing a grievance at the program level, and the commission or the Corporation, as appropriate, will investigate any allegation of displacement as a compliance matter.

J. Transitional Entities (§§ 2550.10 Through 2550.80)

The National Service Trust Act of 1993 and the Corporation's regulations, originally issued in 1994, contemplated the existence of transitional entities, in addition to State commissions and alternative administrative entities, as State bodies that could be eligible to receive Corporation funding and administer national service programs on an interim basis. The provisions relating to transitional entities, however, sunsetted 27 months after the passage of the Act, or December 1995. The Corporation received no comments on this issue. The final rule is identical to the proposed rule and amends the regulations to remove any obsolete references to transitional entities.

K. State Commissions Directly Operating Programs (§ 2550.80(j))

Under the NCSA, a State commission or alternative administrative entity may not directly carry out any national service program that receives assistance under subtitle C of title I of the NCSA. 42 U.S.C. 12638(f). Currently, however, 45 CFR 2550.80 goes further than the statute by prohibiting State commissions from directly operating *any* national service program receiving assistance, in any form, from the Corporation. This means that, currently, a State commission is prohibited from operating not only a subtitle C AmeriCorps program, but also any subtitle H, Learn and Serve (except as permitted in the Learn and Serve legislation), AmeriCorps VISTA, or Senior Corps program. In the proposed rule, the Corporation proposed relaxing the restriction by amending the regulations to conform to the Act and give commissions more flexibility to directly operate non-subtitle C programs.

Six commenters were in favor of this provision, while fifty-one commenters opposed it. Most of the commenters opposing the provision represented Retired and Senior Volunteer Program and Foster Grandparent Program grantees or supporters, and specifically objected to State commissions directly operating Senior Corps programs. The Corporation was not persuaded by most of the reasons the commenters proffered for why State commissions should not be allowed to directly operate Senior Corps programs. However, one of their main oppositions to this provision was that it would eliminate one of the greatest strengths of the National Senior Service Corps programs—the local governance and local decision-making by local community-based sponsors regarding program focus and activities.

One commenter suggested that, because of the significance of this issue, this proposed change should be addressed in reauthorization, rather than in regulation. The Corporation, however, has proposed going no further than the current statutory language allows and, thus, does not believe statutory language is necessary to permit State commissions greater involvement in program delivery.

Nonetheless, the Corporation appreciates the concerns that the commenters expressed over the local nature of Senior Corps programs and the local needs they address. Furthermore, the Corporation notes that its current policy and regulations prohibit a Senior Corps grantee from sub-granting, delegating, or contracting project management responsibilities to any other entity. 45 CFR 2551.22, 2552.22, and 2553.22. While this language does not, in and of itself, prohibit a State commission from becoming a Senior Corps project sponsor, it would require a commission, like any other sponsor, to handle all project management responsibilities itself. The Corporation does not believe that most State commissions are in a position to operate a Senior Corps program without the ability to delegate or subgrant, and agrees with the commenters that local organizations are in the best position to identify local needs and operate the programs.

Furthermore, the Corporation received no indication that State commissions are in any way eager to operate Senior Corps programs—their interest appears to lie more with AmeriCorps VISTA, Special Volunteer Programs, and other initiatives that the Corporation might fund with subtitle H funds. Note that, under the NCSA, only an LEA may apply for school-based Learn and Serve funds.

Consequently, the Corporation is changing the proposed language in section 2550.80(j) to allow State commissions to directly operate any national service program except for those that receive assistance under subtitle C of title I of the NCSA (AmeriCorps), and Title II of the Domestic Volunteer Service Act of 1973 (Senior Corps).

VII. Effective Dates

The final rule will take effect September 6, 2005. However, the following sections will become operational for the 2006 program year:

§§ 2522.400 through 2522.475—Selection Criteria and Process

§§ 2522.500 through 2522.650—Performance Measures

§§ 2522.700 through 2522.740—Evaluation Requirements

To the extent that certain sections of the final rule restate current Corporation policy, current policy will remain in effect until superseded by the regulation.

VIII. Non-Regulatory Issues

A. Streamlining Grantee Requirements and Aligning Them With Grantee Needs

In the Notice of Proposed Rulemaking, the Corporation indicated its intent to streamline our grant application and grant-making processes, and streamline and align with grantee needs our reporting and other requirements. In particular, we discussed revising the timing of the grant cycle to better accommodate programs with start dates in the fall; streamlining continuation grant application and reporting requirements; and clarifying and streamlining our guidance to the field.

Several commenters appreciated the Corporation's efforts to make the grant cycles and reporting requirements flexible based on the needs of grantees, to streamline grant applications and guidelines, to decrease the time it takes to make a grant award, and to cut unnecessary paperwork out of the grant-making process. The Corporation is continuing its efforts to better align the grant-making timetable with grantees' needs, and to streamline application and reporting requirements.

Streamlining Continuation Grants and Reporting Requirements

Section 130 of the National and Community Service Act of 1990 authorizes the Corporation to determine the timing and content of applications for AmeriCorps funding. In the NPRM, the Corporation signaled its intent to change our continuation application requirements to minimize the burden on grantees, while ensuring that the Corporation receives the information it needs to make fiscally responsible continuation awards. Our goal is to streamline the application and review processes for continuations, as well as to give grantees more predictability over the three-year grant cycle.

In our discussion of the streamlining we envisioned in this area, the Corporation stated that we intended to work with State commissions on a schedule that accommodates the different start dates of programs within a State's portfolio. We also stated that, because of the uncertainties of annual appropriations, we were reviewing how this process would affect continuation requests that include an expansion request (including both requests for more program funds and requests for more member MSYs), and may establish an alternate timetable for considering those requests.

Two commenters expressed concern about the impact of approving grants on a rolling basis and tying application and reporting requirements to program start dates. These commenters indicated that States have AmeriCorps programs under a single grant code for specific funding categories—formula, competitive, and EAP. Rolling grant approvals based on program start dates may necessitate a different grant code for each program and would force multiple grant codes to be open and managed for longer periods, according to these commenters. The Corporation does not intend to make separate grants for each program in a State commission's portfolio. Rather, the Corporation intends that a State commission's grant is awarded in time for the program in the State's portfolio with the earliest start date to begin operations.

One commenter discussed the possibility of establishing an alternative timetable for those programs that wish to include an expansion request with their continuation application. This commenter indicated an understanding of how uncertain the annual appropriations process is, but believed that a program should not potentially lose funding because there was no increase in appropriations. A continuation program, according to this commenter, should at least be guaranteed level funding, assuming that it meets all the requirements and demonstrates that it is a high-quality program. While the Corporation typically awards three-year grants, the grants are incrementally funded on an annual basis, and consequently contingent on the availability of appropriations. For continuation programs that are compliant and meeting performance measures, the Corporation makes every effort to ensure level operations, but we cannot guarantee funding across the three years of a grant. The Corporation is continuing to identify ways to streamline this process and will provide further guidance later this year.

B. Maximizing a Grantee's Ability To Meet Objectives and Achieve Strong Outcomes

Re-Fill Rule

Since 2003, the Corporation prohibited programs from re-filling a slot when a member left without completing a term of service. We received 42 comments urging the Corporation to allow programs to refill vacant slots. On January 12, 2005, the Corporation implemented a change in the refill rule; on a pilot basis, to allow limited re-fill of positions. The Corporation will monitor and evaluate this pilot refill rule, and determine whether and to what extent to continue the refill rule in the future.

C. Improving the AmeriCorps Member Experience

During the preliminary input process, the Corporation received input from current and former AmeriCorps members asking us to focus on their experience and the resources available to them. The Corporation has a strong interest in the AmeriCorps member experience and intends to further explore ways to improve it.

In particular, as we indicated in the Notice of Proposed Rulemaking, the Corporation intends to explore creating a member satisfaction survey through which AmeriCorps members would be able to evaluate their programs and their AmeriCorps experience. One commenter supported the creation of a member satisfaction survey to gauge members' experience with both their program and AmeriCorps, as long as it is not a requirement that programs use the survey that the Corporation creates. The Corporation is in the process of creating a national survey for AmeriCorps members and we intend to post the results on our Web site when they are available, for prospective members to consider. Although the survey will be open to all members, the Corporation has not yet determined whether programs will be required to ensure all members participate.

IX. Rulemaking Analyses and Notices

Executive Order 12866

The Corporation has determined that this rule, while a significant regulatory action, is not an "economically significant" rule within the meaning of E.O. 12866 because it is not likely to result in an annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local,

or tribal government or communities. This is, however, a significant rule, and therefore has been reviewed by OMB.

The rule requires all grantees and subgrantees of the Corporation to increase, based on a predictable and incremental schedule, the grantee share of program costs. After the initial three-year grant period, a Corporation-funded program in its fourth year of operation must provide at least 26 percent of their overall program budget in matching money. During years five through ten of Corporation assistance, the program's required matching percentage increases gradually to 50 percent. Programs on the alternative match scale will begin increasing their share of match to 29 percent in the seventh year of operation, increasing gradually to 35 percent in the tenth year and beyond.

The initial impact of this change will be small. During the 2000–2002 grant period—the most recent three-year period where we have complete data on program budgets—about 20.2 percent of all AmeriCorps grantees and subgrantees had match percentages less than 26 percent. About 13 percent of these low-matching programs will not need to match at 26 percent immediately, because they would qualify for the lower match rate available for rural and low-income programs.

Among the rest of the low-matching programs, the average amount of matching money needed to reach the 26 percent level is about $18,900 per program, or about $2,274,700 per year across all AmeriCorps programs. The median program would require about $13,700 in additional matching money to reach the 26 percent level. The total annual project amount needed would increase somewhat—to about $2,806,500 per year—if all programs matched at the 26 percent level. All told, this analysis indicates that the programs that would be affected would require very little additional money to achieve a 26 percent match, and that the overall impact of the rule on Corporation programs falls well short of $100 million annually.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Under the Paperwork Reduction Act, information collection requirements which must be imposed as a result of this regulation have been reviewed by the Office of Management and Budget under OMB nos. 3045–0047, 3045–0065, 3045–0100, and 3045–0101 and these may be revised before this rule becomes effective.

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects

45 CFR Part 2510

Grant programs–social programs, Volunteers.

45 CFR Part 2520

Grant programs–social programs, Volunteers.

45 CFR Part 2521

Grant programs–social programs, Volunteers.

45 CFR Part 2522

Grant programs–social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2540

Administrative practice and procedure, Grant programs–social programs, Reporting and recordkeeping requirements, Volunteers

45 CFR Part 2550

Administrative practice and procedure, Grant programs–social programs.

■ For the reasons stated in the preamble, the Corporation for National and Community Service amends chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

■ 1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

■ 2. Amend § 2510.20 by adding the definitions "recognized equivalent of a high-school diploma" and "target community" in alphabetical order to read as follows:

§ 2510.20 Definitions.

* * * * *

Recognized equivalent of a high-school diploma. The term *recognized equivalent of a high-school diploma* means:

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high-school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high-school but who excelled academically in high-school, documentation that the student excelled academically in high-school and has met the formalized, written policies of the institution for admitting such students.

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Target community. The term *target community* means the geographic community in which an AmeriCorps grant applicant intends to provide service to address an identified unmet human, educational, environmental, or public safety (including disaster-preparedness and response) need.

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PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

■ 1. The authority citation for part 2520 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 2. Add a new § 2520.5 to read as follows:

§ 2520.5 What definitions apply to this part?

You. For this part, *you* refers to the grantee or an organization operating an AmeriCorps program.

■ 3. Revise § 2520.20 to read as follows:

§ 2520.20 What service activities may I support with my grant?

(a) Your grant must initiate, improve, or expand the ability of an organization and community to provide services to address local unmet environmental, educational, public safety (including disaster preparedness and response), or other human needs.

(b) You may use your grant to support AmeriCorps members:

(1) Performing direct service activities that meet local needs.

(2) Performing capacity-building activities that improve the organizational and financial capability of nonprofit organizations and communities to meet local needs by achieving greater organizational efficiency and effectiveness, greater impact and quality of impact, stronger likelihood of successful replicability, or expanded scale.

§ 2520.30 [Redesignated as § 2520.65]

■ 4. Redesignate § 2520.30 as § 2520.65, and add the following sections: §§ 2520.25, 2520.30, 2520.35, 2520.40, 2520.45, 2520.50, 2520.55, and 2520.60.

§ 2520.25 What direct service activities may AmeriCorps members perform?

(a) The AmeriCorps members you support under your grant may perform direct service activities that will advance the goals of your program, that will result in a specific identifiable service or improvement that otherwise would not be provided, and that are included in, or consistent with, your Corporation-approved grant application.

(b) Your members' direct service activities must address local environmental, educational, public safety (including disaster preparedness and response), or other human needs.

(c) Direct service activities generally refer to activities that provide a direct, measurable benefit to an individual, a group, or a community.

(d) Examples of the types of direct service activities AmeriCorps members may perform include, but are not limited to, the following:

(1) Tutoring children in reading;

(2) Helping to run an after-school program;

(3) Engaging in community clean-up projects;

(4) Providing health information to a vulnerable population;

(5) Teaching as part of a professional corps;

(6) Providing relief services to a community affected by a disaster; and

(7) Conducting a neighborhood watch program as part of a public safety effort.

§ 2520.30 What capacity-building activities may AmeriCorps members perform?

Capacity-building activities that AmeriCorps members perform should enhance the mission, strategy, skills, and culture, as well as systems, infrastructure, and human resources of an organization that is meeting unmet community needs. Capacity-building activities help an organization gain greater independence and sustainability.

(a) The AmeriCorps members you support under your grant may perform capacity-building activities that advance your program's goals and that are included in, or consistent with, your Corporation-approved grant application.

(b) Examples of capacity-building activities your members may perform include, but are not limited to, the following:

(1) Strengthening volunteer management and recruitment, including:

(i) Enlisting, training, or coordinating volunteers;

(ii) Helping an organization develop an effective volunteer management system;

(iii) Organizing service days and other events in the community to increase citizen engagement;

(iv) Promoting retention of volunteers by planning recognition events or providing ongoing support and follow-up to ensure that volunteers have a high-quality experience; and

(v) Assisting an organization in reaching out to individuals and communities of different backgrounds when encouraging volunteering to ensure that a breadth of experiences and expertise is represented in service activities.

(2) Conducting outreach and securing resources in support of service activities that meet specific needs in the community;

(3) Helping build the infrastructure of the sponsoring organization, including:

(i) Conducting research, mapping community assets, or gathering other information that will strengthen the sponsoring organization's ability to meet community needs;

(ii) Developing new programs or services in a sponsoring organization seeking to expand;

(iii) Developing organizational systems to improve efficiency and effectiveness;

(iv) Automating organizational operations to improve efficiency and effectiveness;

(v) Initiating or expanding revenue-generating operations directly in support of service activities; and

(vi) Supporting staff and board education.

(4) Developing collaborative relationships with other organizations working to achieve similar goals in the community, such as:

(i) Community organizations, including faith-based organizations;

(ii) Foundations;

(iii) Local government agencies;

(iv) Institutions of higher education; and

(v) Local education agencies or organizations.

§ 2520.35 Must my program recruit or support volunteers?

(a) Unless the Corporation or the State commission, as appropriate, approves otherwise, some component of your program that is supported through the grant awarded by the Corporation must involve recruiting or supporting volunteers.

(b) If you demonstrate that requiring your program to recruit or support volunteers would constitute a fundamental alteration to your program structure, the Corporation (or the State commission for formula programs) may waive the requirement in response to your written request for such a waiver in the grant application.

§ 2520.40 Under what circumstances may AmeriCorps members in my program raise resources?

(a) AmeriCorps members may raise resources directly in support of your program's service activities.

(b) Examples of fundraising activities AmeriCorps members may perform include, but are not limited to, the following:

(1) Seeking donations of books from companies and individuals for a program in which volunteers teach children to read;

(2) Writing a grant proposal to a foundation to secure resources to support the training of volunteers;

(3) Securing supplies and equipment from the community to enable volunteers to help build houses for low-income individuals;

(4) Securing financial resources from the community to assist in launching or expanding a program that provides social services to the members of the community and is delivered, in whole or in part, through the members of a community-based organization;

(5) Seeking donations from alumni of the program for specific service projects being performed by current members.

(c) AmeriCorps members may not:

(1) Raise funds for living allowances or for an organization's general (as opposed to project) operating expenses or endowment;

(2) Write a grant application to the Corporation or to any other Federal agency.

§ 2520.45 How much time may an AmeriCorps member spend fundraising?

An AmeriCorps member may spend no more than ten percent of his or her originally agreed-upon term of service, as reflected in the member enrollment in the National Service Trust, performing fundraising activities, as described in § 2520.40.

§ 2520.50 How much time may AmeriCorps members in my program spend in education and training activities?

(a) No more than 20 percent of the aggregate of all AmeriCorps member service hours in your program, as reflected in the member enrollments in the National Service Trust, may be spent in education and training activities.

(b) Capacity-building activities and direct service activities do not count towards the 20 percent cap on education and training activities.

§ 2520.55 When may my organization collect fees for services provided by AmeriCorps members?

You may, where appropriate, collect fees for direct services provided by AmeriCorps members if:

(a) The service activities conducted by the members are allowable, as defined in this part, and do not violate the non-displacement provisions in § 2540.100 of these regulations; and

(b) You use any fees collected to finance your non-Corporation share, or as otherwise authorized by the Corporation.

§ 2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?

You must follow all applicable OMB circulars on allowable costs (OMB Circular A–87 for State, Local, and Indian Tribal Governments, OMB Circular A–122 for Nonprofit Organizations, and OMB Circular A–21 for Educational Institutions). In general, the OMB circulars do not allow the following as direct costs under the grant: Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

■ 1. The authority citation for part 2521 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 2. Add a new § 2521.5 to read as follows:

§ 2521.5 What definitions apply to this part?

You. For this part, *you* refers to the grantee, unless otherwise noted.

■ 3. Establish a new § 2521.95 with the heading as set forth below.

§ 2521.95 To what extent may I use grant funds for administrative costs?

§ 2521.30 [Amended]

■ 4–5. Transfer the text of paragraph (h) of § 2521.30 to new § 2521.95, and remove § 2521.30(g); and:

■ a. In new § 2521.95, redesignate transfered paragraphs (h)(1), (h)(2) and (h)(3) introductory text as (a), (b), and (c), respectively;

■ b. Redesignate transfered (h)(3)(i), (h)(3)(i)(A), and (h)(3)(i)(B) as (c)(1), (c)(1)(i), (c)(1)(ii), respectively; and

■ c. Redesignate transfered (h)(3)(ii) and (h)(3)(iii) as (c)(2), and (c)(3), respectively.

■ 6. Add a new center heading after § 2521.30 as set forth below.

Program Matching Requirements

■ 7. Add the following sections: §§ 2521.35, 2521.40, 2521.45, 2521.50, 2521.60, 2521.70, 2521.80, and 2521.90.

§ 2521.35 Who must comply with matching requirements?

(a) The matching requirements described in §§ 2521.40 through 2521.95 apply to you if you are a subgrantee of a State commission or a direct program grantee of the Corporation. These requirements do not apply to Education Award Programs.

(b) If you are a State commission, you must ensure that your grantees meet the match requirements established in this part, and you are also responsible for meeting an aggregate overall match based on your grantees' match individual match requirements.

§ 2521.40 What are the matching requirements?

If you are subject to matching requirements under § 2521.35, you must adhere to the following:

(a) Basic match: At a minimum, you must meet the basic match requirements as articulated in § 2521.45.

(b) Regulatory match: In addition to the basic requirements under paragraph (a) of this section, you must provide an overall level of matching funds according to the schedule in § 2521.60(a), or § 2521.60(b) if applicable.

(c) Budgeted match: To the extent that the match in your approved budget exceeds your required match levels under paragraph (a) or (b) of this section, any failure to provide the amount above your regulatory match but below your budgeted match will be considered as a measure of past performance in subsequent grant competitions.

§ 2521.45 What are the limitations on the Federal government's share of program costs?

The limitations on the Federal government's share are different—in type and amount—for member support costs and program operating costs.

(a) *Member support:* The Federal share, including Corporation and other Federal funds, of member support costs, which include the living allowance required under § 2522.240(b)(1), FICA, unemployment insurance (if required under State law), worker's compensation (if required under State law), is limited as follows:

(1) The Federal share of the living allowance may not exceed 85 percent of the minimum living allowance required under § 2522.240(b)(1), and 85 percent of other member support costs.

(2) If you are a professional corps described in § 2522.240(b)(2)(i), you may not use Corporation funds for the living allowance.

(3) Your share of member support costs must be non-Federal cash.

(4) The Corporation's share of health care costs may not exceed 85 percent.

(b) *Program operating costs:* The Corporation share of program operating costs may not exceed 67 percent. These costs include expenditures (other than member support costs described in paragraph (a) of this section) such as staff, operating expenses, internal evaluation, and administration costs.

(1) You may provide your share of program operating costs with cash, including other Federal funds (as long as the other Federal agency permits its funds to be used as match), or third party in-kind contributions.

(2) Contributions, including third party in-kind must:

(i) Be verifiable from your records;

(ii) Not be included as contributions for any other Federally assisted program;

(iii) Be necessary and reasonable for the proper and efficient accomplishment of your program's objectives; and

(iv) Be allowable under applicable OMB cost principles.

(3) You may not include the value of direct community service performed by volunteers, but you may include the value of services contributed by volunteers to your organizations for organizational functions such as

accounting, audit, and training of staff and AmeriCorps programs.

§ 2521.50 If I am an Indian Tribe, to what extent may I use tribal funds towards my share of costs?

If you are an Indian Tribe that receives tribal funds through Public Law 93–638 (the Indian Self-Determination and Education Assistance Act), those funds are considered non-Federal and you may use them towards your share of costs, including member support costs.

§ 2521.60 To what extent must my share of program costs increase over time?

Except as provided in paragraph (b) of this section, if your program continues to receive funding after an initial three-year grant period, you must continue to meet the minimum requirements in § 2541.45 of this part. In addition, your required share of program costs, including member support and operating costs, will incrementally increase to a 50 percent overall share by the tenth year and any year thereafter that you receive a grant, without a break in funding of five years or more. A 50 percent overall match means that you will be required to match $1 for every $1 you receive from the Corporation.

(a) *Minimum Organization Share:* (1) Subject to the requirements of § 2521.45 of this part, and except as provided in paragraph (b) of this section, your overall share of program costs will increase as of the fourth consecutive year that you receive a grant, according to the following timetable:

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)	Year 5 (percent)	Year 6 (percent)	Year 7 (percent)	Year 8 (percent)	Year 9 (percent)	Year 10 (percent)
Minimum member support	15	15	15	15	15	15	15	15	15	15
Minimum operating costs	33	33	33	33	33	33	33	33	33	33
Minimum overall share	N/A	N/A	N/A	26	30	34	38	42	46	50

(2) A grantee must have contributed matching resources by the end of a grant period in an amount equal to the combined total of the minimum overall annual match for each year of the grant period, according to the table in paragraph (a)(1) of this section.

(3) A State commission may meet its match based on the aggregate of its grantees' individual match requirements.

(b) *Alternative match requirements:* If your program is unable to meet the match requirements as required in paragraph (a) of this section, and is located in a rural or a severely economically distressed community, you may apply to the Corporation for a waiver that would require you to increase the overall amount of your share of program costs beginning in the seventh consecutive year that you receive a grant, according to the following table:

	Year 1 (percent)	Year 2 (percent)	Year 3 (percent)	Year 4 (percent)	Year 5 (percent)	Year 6 (percent)	Year 7 (percent)	Year 8 (percent)	Year 9 (percent)	Year 10 (percent)
Minimum member support	15	15	15	15	15	15	15	15	15	15
Minimum operating costs	33	33	33	33	33	33	33	33	33	33
Minimum overall share	N/A	N/A	N/A	N/A	N/A	N/A	29	31	33	35

(c) *Determining Program Location.* (1) The Corporation will determine whether your program is located in a rural county by considering the U.S. Department of Agriculture's Beale Codes.

(2) The Corporation will determine whether your program is located in a severely economically distressed county by considering unemployment rates, per capita income, and poverty rates.

(3) Unless the Corporation approves otherwise, as provided in paragraph (c)(4) of this section, the Corporation will determine the location of your program based on the legal applicant's address.

(4) If you believe that the legal applicant's address is not the appropriate way to consider the location of your program, you may request the waiver described in paragraph (b) of this section and provide the relevant facts about your program location to support your request.

(d) *Schedule for current program grants:* If you have completed at least one three-year grant cycle on the date this regulation takes effect, you will be required to provide your share of costs beginning at the year three level, according to the table in paragraph (a) of this section, in the first program year in your grant following the regulation's effective date, and increasing each year thereafter as reflected in the table.

(e) *Flexibility in how you provide your share:* As long as you meet the basic match requirements in § 2521.45, you may use cash or in-kind contributions to reach the overall share level. For example, if your organization finds it easier to raise member support match, you may choose to meet the required overall match by raising only more member support match, and leave operational match at the basic level, as long as you provide the required overall match.

(f) *Reporting excess resources.* (1) The Corporation encourages you to obtain support over-and-above the matching fund requirements. Reporting these resources may make your application more likely to be selected for funding, based on the selection criteria in §§ 2522.430 and 2522.435 of these regulations.

(2) You must comply with § 2543.23 of this title and applicable OMB circulars in documenting cash and in-kind contributions and excess resources.

§ 2521.70 To what extent may the Corporation waive the matching requirements in §§ 2521.45 and 2521.60 of this part?

(a) The Corporation may waive, in whole or in part, the requirements of §§ 2521.45 and 2521.60 of this part if the Corporation determines that a waiver would be equitable because of a lack of available financial resources at the local level.

(b) If you are requesting a waiver, you must demonstrate:

(1) The lack of resources at the local level;

(2) That the lack of resources in your local community is unique or unusual;

(3) The efforts you have made to raise matching resources; and

(4) The amount of matching resources you have raised or reasonably expect to raise.

(c) You must provide with your waiver request:

(1) A request for the specific amount of match you are requesting that the Corporation waive; and

(2) A budget and budget narrative that reflects the requested level in matching resources.

§ 2521.80 What matching level applies if my program was funded in the past but has not recently received an AmeriCorps grant?

(a) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for five years or more, as determined by the end date of your most recent grant period, you may begin matching at the year one level, as reflected in the timetable in § 2521.60(a) of this part, upon receiving your new grant award.

(b) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for fewer than five years, you must begin matching at the same level you were matching at the end of your most recent grant period.

§ 2521.90 If I am a new or replacement legal applicant for an existing program, what will my matching requirements be?

If your organization is a new or replacement legal applicant for an existing program, you must provide matching resources at the level the previous legal applicant had reached at the time you took over the program.

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

■ 1. The authority citation for part 2522 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595.

■ 2. Add a new § 2522.10 to subpart A to read as follows:

§ 2522.10 What definitions apply to this part?

You. For this part, *you* refers to the grantee, unless otherwise noted.

■ 3. Amend § 2522.250 as follows:

■ a. In paragraph (a)(3) revise the text to read as follows; and

■ b. In paragraph (b)(3) revise the paragraph heading, and paragraph (b)(3)(i), to read as follows:

§ 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) * * *

(3) * * * The amount of the child-care allowance may not exceed the applicable payment rate to an eligible provider established by the State for child care funded under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

* * * * *

(b) * * *

(3) *Corporation share.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the Corporation's share of the cost of health coverage may not exceed 85 percent.

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■ 4a. Revise § 2522.400 and § 2522.410 to read as follows:

§ 2522.400 What process does the Corporation use to select new grantees?

The Corporation uses a multi-stage process, which may include review by panels of experts, Corporation staff review, and approval by the Chief Executive Officer or the Board of Directors, or their designee.

§ 2522.410 What is the role of the Corporation's Board of Directors in the selection process?

The Board of Directors has general authority to determine the selection process, including priorities and selection criteria, and has authority to make grant decisions. The Board may delegate these functions to the Chief Executive Officer.

§ 2522.420 [Redesignated as § 2522.480]

■ 4b. Redesignate § 2522.420 as § 2522.480.

■ 5. Add the following sections: §§ 2522.415, 2522.420, 2522.425, 2522.430, 2522.435, 2522.440, 2522.445, 2522.448, 2522.450, 2522.455, 2522.460, 2522.465, 2522.470, and 2522.475.

§ 2522.415 How does the grant selection process work?

The selection process includes:

(a) Determining whether your proposal complies with the application requirements, such as deadlines and eligibility requirements;

(b) Applying the basic selection criteria to assess the quality of your proposal;

(c) Applying any applicable priorities or preferences, as stated in these regulations and in the applicable Notice of Funding Availability; and

(d) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's national AmeriCorps portfolio.

§ 2522.420 What basic criteria does the Corporation use in making funding decisions?

In evaluating your application for funding, the Corporation will assess:

(a) Your program design;

(b) Your organizational capability; and

(c) Your program's cost-effectiveness and budget adequacy.

§ 2522. 425 What does the Corporation consider in assessing Program Design?

In determining the quality of your proposal's program design, the Corporation considers your rationale and approach for the proposed program, member outputs and outcomes, and community outputs and outcomes.

(a) *Rationale and approach.* In evaluating your rationale and approach, the Corporation considers the following criteria:

(1) Whether your proposal describes and adequately documents a compelling need within the target community, including a description of how you identified the need;

(2) Whether your proposal includes well-designed activities that address the compelling need, with ambitious performance measures, and a plan or system for continuous program self-assessment and improvement;

(3) Whether your proposal describes well-defined roles for participants that are aligned with the identified needs and that lead to measurable outputs and outcomes; and

(4) The extent to which your proposed program or project:

(i) Effectively involves the target community in planning and implementation;

(ii) Builds on (without duplicating), or reflects collaboration with, other national and community service programs supported by the Corporation; and

(iii) Is designed to be replicated.

(b) *Member outputs and outcomes.* In evaluating how your proposal addresses member outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Includes effective and feasible plans for, or evidence of, recruiting, managing, and rewarding diverse members, including those from the target community, and demonstrating member satisfaction;

(2) If you are a current grantee, has succeeded in meeting reasonable member enrollment and retention targets in prior grant periods, as determined by the Corporation;

(3) Includes effective and feasible plans for, or evidence of, developing, training, and supervising members;

(4) Demonstrates well-designed training or service activities that promote and sustain post-service, an ethic of service and civic responsibility, including structured opportunities for

members to reflect on and learn from their service; and

(5) If you are a current grantee, has met well-defined, performance measures regarding AmeriCorps members, including any applicable national performance measures, and including outputs and outcomes.

(c) *Community outputs and outcomes.* In evaluating whether your proposal adequately addresses community outputs and outcomes, the Corporation considers the extent to which your proposal or program:

(1) Is successful in meeting targeted, compelling community needs, or if you are a current grantee, the extent to which your program has met its well-defined, community-based performance measures, including any applicable national performance measures, and including outputs and outcomes, in previous grant cycles, and is continually expanding and increasing its reach and impact in the community;

(2) Has an impact in the community that is sustainable beyond the presence of Federal support (For example, if one of your projects is to revitalize a local park, you would meet this criterion by showing that after you have completed your revitalization project, the community will continue its upkeep on its own);

(3) Generates and supports volunteers to expand the reach of your program in the community; and

(4) Enhances capacity-building of other organizations and institutions important to the community, such as schools, homeland security organizations, neighborhood watch organizations, civic associations, and community organizations, including faith-based organizations.

§ 2522.430 How does the Corporation assess my organizational capability?

(a) In evaluating your organizational capability, the Corporation considers the following:

(1) The extent to which your organization has a sound structure including:

(i) The ability to provide sound programmatic and fiscal oversight;

(ii) Well-defined roles for your board of directors, administrators, and staff;

(iii) A well-designed plan or systems for organizational (as opposed to program) self-assessment and continuous improvement; and

(iv) The ability to provide or secure effective technical assistance.

(2) Whether your organization has a sound record of accomplishment as an organization, including the extent to which you:

(i) Generate and support diverse volunteers who increase your organization's capacity;

(ii) Demonstrate leadership within the organization and the community served; and

(iii) If you are an existing grantee, you have secured the matching resources as reflected in your prior grant awards;

(3) The extent to which you are securing community support that recurs, expands in scope, or increases in amount, and is more diverse, as evidenced by—

(i) Collaborations that increase the quality and reach of service and include well-defined roles for faith-based and other community organizations;

(ii) Local financial and in-kind contributions; and

(iii) Supporters who represent a wide range of community stakeholders.

(b) In applying the criteria in paragraph (a) of this section to each proposal, the Corporation may take into account the following circumstances of individual organizations:

(1) The age of your organization and its rate of growth; and

(2) Whether your organization serves a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of philanthropic and corporate resources.

§ 2522.435 How does the Corporation evaluate the cost-effectiveness and budget adequacy of my program?

(a) In evaluating the cost-effectiveness and budget adequacy of your proposed program, the Corporation considers the following:

(1) Whether your program is cost-effective based on:

(i) Your program's proposed Corporation cost per MSY, as defined in § 2522.485; and

(ii) Other indicators of cost-effectiveness, such as:

(A) The extent to which your program demonstrates diverse non-Federal resources for program implementation and sustainability;

(B) If you are a current grantee, the extent to which you are increasing your share of costs to meet or exceed program goals; or

(C) If you are a current grantee, the extent to which you are proposing deeper impact or broader reach without a commensurate increase in Federal costs; and

(2) Whether your budget is adequate to support your program design.

(b) In applying the cost-effectiveness criteria in paragraph (a) of this section, the Corporation will take into account the following circumstances of individual programs:

(1) Program age, or the extent to which your program brings on new sites;

(2) Whether your program or project is located in a resource-poor community, such as a rural or remote community, a community with a high poverty rate, or a community with a scarcity of corporate or philanthropic resources;

(3) Whether your program or project is located in a high-cost, economically distressed community, measured by applying appropriate Federal and State data; and

(4) Whether the reasonable and necessary costs of your program or project are higher because they are associated with engaging or serving difficult-to-reach populations, or achieving greater program impact as evidenced through performance measures and program evaluation.

(c) The indicators in paragraphs (a)(1)(i) and (a)(1)(ii)(B) of this section do not apply to Education Award Program applicants.

§ 2522.440 What weight does the Corporation give to each category of the basic criteria?

In evaluating applications, the Corporation assigns the following weights for each category:

Category	Percentage
Program design	50
Organizational capability	25
Cost-effectiveness and budget adequacy	25

§ 2522.445 What weights does the Corporation give to the subcategories under Program Design?

The Corporation gives the following weights to the subcategories under Program Design:

Program design sub-category	Percentage
Rationale and approach	10
Member outputs and outcomes	20
Community outputs and outcomes	20

§ 2522.448 What weights does the Corporation give to the subcategories under Cost Effectiveness and Budget Adequacy?

Cost-effectiveness and budget adequacy sub-category	Percentage
Cost-effectiveness	15
Adequacy of budget	10

§ 2522.450 What types of programs or program models may receive special consideration in the selection process?

Following the scoring of proposals under § 2522.440 of this part, the Corporation will seek to ensure that its portfolio of approved programs includes a meaningful representation of proposals that address one or more of the following priorities:

(a) *Program models:* (1) Programs operated by community organizations, including faith-based organizations, or programs that support the efforts of community organizations, including faith-based organizations, to solve local problems;

(2) Lower-cost professional corps programs, as defined in paragraph (a)(3) of § 2522.110 of this chapter.

(b) *Program activities:* (1) Programs that serve or involve children and youth, including mentoring of disadvantaged youth and children of prisoners;

(2) Programs that address educational needs, including those that carry out literacy and tutoring activities generally, and those that focus on reading for children in the third grade or younger;

(3) Programs that focus on homeland security activities that support and promote public safety, public health, and preparedness for any emergency, natural or man-made (this includes programs that help to plan, equip, train, and practice the response capabilities of many different response units ready to mobilize without warning for any emergency);

(4) Programs that address issues relating to the environment;

(5) Programs that support independent living for seniors or individuals with disabilities;

(6) Programs that increase service and service-learning on higher education campuses in partnership with their surrounding communities;

(7) Programs that foster opportunities for Americans born in the post-World War II baby boom to serve and volunteer in their communities; and

(8) Programs that involve community-development by finding and using local resources, and the capacities, skills, and assets of lower-income people and their community, to rejuvenate their local economy, strengthen public and private investments in the community, and help rebuild civil society.

(c) *Programs supporting distressed communities:* Programs or projects that will be conducted in:

(1) A community designated as an empowerment zone or redevelopment area, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people;

(2) An area that is environmentally distressed, as demonstrated by Federal and State data;

(3) An area adversely affected by Federal actions related to managing Federal lands that result in significant regional job losses and economic dislocation;

(4) An area adversely affected by reductions in defense spending or the closure or realignment of military installation;

(5) An area that has an unemployment rate greater than the national average unemployment for the most recent 12 months for which State or Federal data are available;

(6) A rural community, as demonstrated by Federal and State data; or

(7) A severely economically distressed community, as demonstrated by Federal and State data.

(d) *Other programs:* Programs that meet any additional priorities as the Corporation determines and disseminates in advance of the selection process.

§ 2522.455 How do I find out about additional priorities governing the selection process?

The Corporation posts discretionary funding opportunities addressing the Corporation's selection preferences and additional requirements on our website at *www.nationalservice.gov* and at *www.grants.gov* in advance of grant competitions

§ 2522. 460 To what extent may the Corporation or a State commission consider priorities other than those stated in these regulations or the Notice of Funding Availability?

(a) The Corporation may give special consideration to a national service program submitted by a State commission that does not meet one of the Corporation's priorities if the State commission adequately explains why the State is not able to carry out a program that meets one of the Corporation's priorities, and why the program meets one of the State's priorities.

(b) A State may apply priorities different than those of the Corporation in selecting its formula programs.

§ 2522.465 What information must a State commission submit on the relative strengths of applicants for State competitive funding?

(a) If you are a State commission applying for State competitive funding, you must prioritize the proposals you submit in rank order based on their relative quality and according to the following table:

If you submit this number of state competitive proposals to the corporation	Then you must rank this number of proposals
1 to 12	At least top 5.
13 to 24	At least top 10.
25 or more	At least top 15.

(b) While the rankings you provide will not be determinative in the grant selection process, and the Corporation will not be bound by them, we will consider them in our selection process.

§ 2522.470 What other factors or information may the Corporation consider in making final funding decisions?

(a) The Corporation will seek to ensure that our portfolio of AmeriCorps programs is programmatically, demographically, and geographically diverse and includes innovative programs, and projects in rural, high poverty, and economically distressed areas.

(b) In applying the selection criteria under §§ 2522.420 through 2522.435, the Corporation may, with respect to a particular proposal, also consider one or more of the following for purposes of clarifying or verifying information in a proposal, including conducting due diligence to ensure an applicant's ability to manage Federal funds:

(1) For an applicant that has previously received a Corporation grant, any information or records the applicant submitted to the Corporation, or that the Corporation has in its system of records, in connection with its previous grant (*e.g.* progress reports, site visit reports, financial status reports, audits, HHS Account Payment Data Reports, Federal Cash Transaction Reports, timeliness of past reporting, etc.);

(2) Program evaluations;

(3) Member-related information from the Corporation's systems;

(4) Other Corporation internal information, including information from the Office of Inspector General, administrative standards for State commissions, and reports on program training and technical assistance;

(5) IRS Tax Form 990;

(6) An applicant organization's annual report;

(7) Information relating to the applicant's financial management from Corporation records;

(8) Member satisfaction indicators;

(9) Publicly available information including:

(i) Socio-economic and demographic data, such as poverty rate, unemployment rate, labor force

participation, and median household income;

(ii) Information on where an applicant and its activities fall on the U.S. Department of Agriculture's urban-rural continuum (Beale codes);

(iii) Information on the nonprofit and philanthropic community, such as charitable giving per capita;

(iv) Information from an applicant organization's website; and

(v) U.S. Department of Education data on Federal Work Study and Community Service; and

(10) Other information, following notice in the relevant Notice of Funding Availability, of the specific information and the Corporation's intention to be able to consider that information in the review process.

(c) Before approving a program grant to a State commission, the Corporation will consider a State commission's capacity to manage and monitor grants.

§ 2522. 475 To what extent must I use the Corporation's selection criteria and priorities when selecting formula programs or operating sites?

You must ensure that the selection criteria you use include the following criteria:

(a) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(b) The innovative aspects of the national service program, and the feasibility of replicating the program.

(c) The sustainability of the national service program.

(d) The quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs.

(e) The extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program.

(f) The extent to which projects would be conducted in one of the areas listed in § 2522.450(c)(1) through (5) of this subpart.

(g) In the case of applicants other than States, the extent to which the application is consistent with the application of the State in which the projects would be conducted.

(h) Such other criteria as the Corporation considers to be appropriate, following appropriate notice.

■ 6. Add new § 2522.485 to read as follows:

§ 2522.485 How do I calculate my program's budgeted Corporation cost per member service year (MSY)?

If you are an AmeriCorps national and community service program, you calculate your Corporation cost per MSY by dividing the Corporation's share of budgeted grant costs by the number of member service years you are awarded in your grant. You do not include child-care or the cost of the education award a member may earn through serving with your program.

§§ 2522.540, 2522.550, and 2522.560 [Redesignated as §§ 2522.800, 2522.810, and 2522.820]

■ 7. Amend subpart E of part 2522 as follows:

a. By redesignating § 2522.540, § 2522.550, and § 2522.560 as § 2522.800, § 2522.810, and § 2522.820 respectively;

b. By revising §§ 2522.500, 2522.510, 2522.520, and 2522.530;

c. By adding §§ 2522.540, 2522.550, 2522.560, 2522.570, 2522.580, 2522.590, 2522.600, 2522.610, 2522.620, 2522.630, 2522.640, 2522.650, 2522.700, 2522.710, 2522.720, 2522.730, and 2522.740; and

d. By adding undesignated center headings preceding §§ 2522.550 and 2522.700.

The added and revised text reads as follows:

§ 2522.500 What is the purpose of this subpart?

(a) This subpart sets forth the minimum performance measures and evaluation requirements that you as a Corporation applicant or grantee must follow.

(b) The performance measures that you, as an applicant, propose when you apply will be considered in the review process and may affect whether the Corporation selects you to receive a grant. Your performance related to your approved measures will influence whether you continue to receive funding.

(c) Performance measures and evaluations are designed to strengthen your AmeriCorps program and foster continuous improvement, and help identify best practices and models that merit replication, as well as programmatic weaknesses that need attention.

§ 2522.510 To whom does this subpart apply?

This subpart applies to you if you are a Corporation grantee administering an AmeriCorps grant, including an Education Award Program grant, or if you are applying to receive AmeriCorps funding from the Corporation.

§ 2522.520 What special terms are used in this subpart?

The following definitions apply to terms used in this subpart of the regulations:

(a) *Approved application* means the application approved by the Corporation or, for formula programs, by a State commission.

(b) *Community beneficiaries* refers to persons who receive services or benefits from a program, but not to AmeriCorps members or to staff of the organization operating the program.

(c) *Outputs* are the amount or units of service that members or volunteers have completed, or the number of community beneficiaries the program has served. Outputs do not provide information on benefits or other changes in communities or in the lives of members or community beneficiaries. Examples of outputs could include the number of people a program tutors, counsels, houses, or feeds.

(d) *Intermediate-outcomes* specify a change that has occurred in communities or in the lives of community beneficiaries or members, but is not necessarily a lasting benefit for them. They are observable and measurable indications of whether or not a program is making progress and are logically connected to end outcomes. An example would be the number and percentage of students who report reading more books as a result of their participation in a tutoring program.

(e) *Internal evaluation* means an evaluation that a grantee performs in-house without the use of an independent external evaluator.

(f) *End-outcomes* specify a change that has occurred in communities or in the lives of community beneficiaries or members that is significant and lasting. These are actual benefits or changes for participants during or after a program. For example, in a tutoring program, the end outcome could be the percent and number of students who have improved their reading scores to grade-level, or other specific measures of academic achievement.

(g) *Grantee* includes subgrantees, programs, and projects.

(h) *National performance measures* are performance measures that the Corporation develops.

(h) *You* refers to a grantee or applicant organization.

§ 2522.530 May I use the Corporation's program grant funds for performance measurement and evaluation?

If performance measurement and evaluation costs were approved as part of your grant, you may use your

program grant funds to support them, consistent with the level of approved costs for such activities in your grant award.

§ 2522.540 Do the costs of performance measurement or evaluation count towards the statutory cap on administrative costs?

No, the costs of performance measurement and evaluation do not count towards the statutory five percent cap on administrative costs in the grant, as provided in § 2540.110 of this chapter.

Performance Measures: Requirements and Procedures

§ 2522.550 What basic requirements must I follow in measuring performance under my grant?

All grantees must establish, track, and assess performance measures for their programs. As a grantee, you must ensure that any program under your oversight fulfills performance measure and evaluation requirements. In addition, you must:

(a) Establish ambitious performance measures in consultation with the Corporation, or the State commission, as appropriate, following §§ 2422.560 through 2422.660 of this subpart;

(b) Ensure that any program under your oversight collects and organizes performance data on an ongoing basis, at least annually;

(c) Ensure that any program under your oversight tracks progress toward meeting your performance measures;

(d) Ensure that any program under your oversight corrects performance deficiencies promptly; and

(e) Accurately and fairly present the results in reports to the Corporation.

§ 2522.560 What are performance measures and performance measurement?

(a) Performance measures are measurable indicators of a program's performance as it relates to member service activities.

(b) Performance measurement is the process of regularly measuring the services provided by your program and the effect your program has in communities or in the lives of members or community beneficiaries.

(c) The main purpose of performance measurement is to strengthen your AmeriCorps program and foster continuous improvement and to identify best practices and models that merit replication. Performance measurement will also help identify programmatic weaknesses that need attention.

§ 2522.570 What information on performance measures must my grant application include?

You must submit all of the following as part of your application for each program:

(a) Proposed performance measures, as described in § 2522.580 and § 2522.590 of this part.

(b) Estimated performance data for the program years for which you submit your application; and

(c) Actual performance data, where available, as follows:

(i) For continuation programs, performance data over the course of the grant to date; and

(ii) For recompeting programs, performance data for the preceding three-year grant cycle.

§ 2522.580 What performance measures am I required to submit to the Corporation?

(a) When applying for funds, you must submit, at a minimum, the following performance measures:

(1) One set of aligned performance measures (one output, one intermediate-outcome, and one end-outcome) that capture the results of your program's primary activity, or area of significant activity for programs whose design precludes identifying a primary activity; and

(2) Any national performance measures the Corporation may require, as specified in paragraph (b) of § 2522.590.

(b) For example, a tutoring program might use the following aligned performance measures:

(1) Output: Number of students that participated in a tutoring program;

(2) Intermediate-Outcome: Percent of students reading more books; and

(3) End-Outcome: Number and percent of students who have improved their reading score to grade level.

(c) The Corporation encourages you to exceed the minimum requirements expressed in this section and expects, in second and subsequent grant cycles, that you will more fully develop your performance measures, including establishing multiple performance indicators, and improving and refining those you used in the past. Any performance measures you submit beyond what is required in paragraph (a)(1) of this section may or may not be aligned sets of measures.

§ 2522.590 Who develops my performance measures?

(a) You are responsible for developing your program-specific performance measures through your own internal process.

(b) In addition, the Corporation may, in consultation with grantees, establish performance measures that will apply to all Corporation-sponsored programs, which you will be responsible for collecting and meeting.

§ 2522.600 Who approves my performance measures?

(a) The Corporation will review and approve performance measures, as part of the grant application review process, for all non-formula programs. If the Corporation selects your application for funding, the Corporation will approve your performance measures as part of your grant award.

(b) If you are a program submitting an application under the State formula category, the applicable State commission is responsible for reviewing and approving your performance measures. The Corporation will not separately approve these measures.

§ 2522.610 What is the difference in performance measurements requirements for competitive and formula programs?

(a) Except as provided-in paragraph (b) of this section, State commissions are responsible for making the final determination of performance measures for State formula programs, while the Corporation makes the final determination for all other programs.

(b) The Corporation may, through the State commission, require that formula programs meet certain national performance measures above and beyond what the State commission has individually negotiated with its formula grantees.

(c) While State commissions must hold their sub-grantees responsible for their performance measures, a State commission, as a grantee, is responsible to the Corporation for its formula programs' performance measures.

§ 2522.620 How do I report my performance measures to the Corporation?

The Corporation sets specific reporting requirements, including frequency and deadlines, for performance measures in the grant award.

(a) In general, you are required to report on the actual results that occurred when implementing the grant and to regularly measure your program's performance.

(b) Your report must include the results on the performance measures approved as part of your grant award.

(c) At a minimum, you are required to report on outputs at the end of year one; outputs and intermediate-outcomes at the end of year two; and outputs, intermediate-outcomes and end-outcomes at the end of year three. We encourage you to exceed these

minimum requirements and report results earlier.

§ 2522.630 What must I do if I am not able to meet my performance measures?

If you are not on track to meet your performance measures, you must develop and submit to the Corporation, or the State commission for formula programs, a corrective action plan, consistent with paragraph (a) of this section, or submit a request to the Corporation, or the State commission for formula programs, consistent with paragraph (b) of this section, to amend your requirements under the circumstances described in § 2522.640 of this subpart.

(a) Your corrective action plan must be in writing and include all of the following:

(1) The factors impacting your performance goals;

(2) The strategy you are using and corrective action you are taking to get back on track toward your established performance measures; and

(3) The timeframe in which you plan to achieve getting back on track with your performance measures.

(b) A request to amend your performance measures must include all of the following:

(1) Why you are not on track to meet your performance requirements;

(2) How you have been tracking performance measures;

(3) Evidence of the corrective action you have taken;

(4) Any new proposed performance measures or targets; and

(5) Your plan to ensure that you meet any new measures.

(c) You must submit your plan under paragraph (a) of this section, or your request under paragraph (b) of this section, within 30 days of determining that you are not on track to meeting your performance measures.

(d) If you are a formula program, the State commission that approves the plan under paragraph (a) of this section or the request to amend your performance measures under paragraph (b) of this section, must forward an information copy to the Corporation's AmeriCorps program office within 15 days of approving the plan or the request.

§ 2522.640 Under what circumstances may I change my performance measures?

(a) You may change your performance measures only if the Corporation or, for formula programs, the State commission, approves your request to do so based on your need to:

(1) Adjust your performance measure or target based on experience so that your program's goals are more realistic and manageable;

(2) Replace a measure related to one issue area with one related to a different issue area that is more aligned with your program service activity. For example, you may need to replace an objective related to health with one related to the environment;

(3) Redefine the service that individuals perform under the grant. For example, you may need to define your service as tutoring adults in English, as opposed to operating an after-school program for third-graders;

(4) Eliminate an activity because you have been unable to secure necessary matching funding; or

(5) Replace one measure with another. For example, you may decide that you want to replace one measure of literacy tutoring (increased attendance at school) with another (percentage of students who are promoted to the next grade level).

(b) [Reserved].

§ 2522.650 What happens if I fail to meet the performance measures included in my grant?

(a) If you are significantly under-performing based on the performance measures approved in your grant, or fail to collect appropriate data to allow performance measurement, the Corporation, or the State commission for formula grantees, may specify a period of correction, after consulting with you. As a grantee, you must report results at the end of the period of correction. At that point, if you continue to under-perform, or fail to collect appropriate data to allow performance measurement, the Corporation may take one or more of the following actions:

(1) Reduce the amount of your grant;

(2) Suspend or terminate your grant;

(3) Use this information to assess any application from your organization for a new AmeriCorps grant or a new grant under another program administered by the Corporation;

(4) Amend the terms of any Corporation grants to your organization; or

(5) Take other actions that the Corporation deems appropriate.

(b) If you are a State commission whose formula program(s) is significantly under-performing or failing to collect appropriate data to allow performance measurement, we encourage you to take action as delineated in paragraph (a) of this section.

Evaluating Programs: Requirements and Procedures

§ 2522.700 How does evaluation differ from performance measurement?

(a) Evaluation is a more in-depth, rigorous effort to measure the impact of programs. While performance measurement and evaluation both include systematic data collection and measurement of progress, evaluation uses scientifically-based research methods to assess the effectiveness of programs by comparing the observed program outcomes with what would have happened in the absence of the program. Unlike performance measures, evaluations estimate the impacts of programs by comparing the outcomes for individuals receiving a service or participating in a program to the outcomes for similar individuals not receiving a service or not participating in a program. For example, an evaluation of a literacy program may compare the reading ability of students in a program over time to a similar group of students not participating in a program.

(b) Performance measurement is the process of systematically and regularly collecting and monitoring data related to the direction of observed changes in communities, participants (members), or end beneficiaries receiving your program's services. It is intended to provide an indication of your program's operations and performance. In contrast to evaluation, it is not intended to establish a causal relationship between your program and a desired (or undesired) program outcome. For example, a performance measure for a literacy program may include the percentage of students receiving services from your program who increase their reading ability from "below grade level" to "at or above grade level". This measure indicates something good is happening to your program's service beneficiaries, but it does not indicate that the change can be wholly attributed to your program's services.

§ 2522.710 What are my evaluation requirements?

(a) If you are a State commission, you must establish and enforce evaluation requirements for your State formula subgrantees, as you deem appropriate.

(b) If you are a State competitive or direct Corporation AmeriCorps grantee (other than an Education Award Program grantee), and your average annual Corporation program grant is $500,000 or more, you must arrange for an independent evaluation of your program, and you must submit the

evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(c) If you are a State competitive or direct Corporation AmeriCorps grantee whose average annual Corporation program grant is less than $500,000, or an Education Award Program grantee, you must conduct an internal evaluation of your program, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(d) The Corporation may, in its discretion, supersede these requirements with an alternative evaluation approach, including one conducted by the Corporation at the national level.

(e) Grantees must cooperate fully with all Corporation evaluation activities.

§ 2522.720 How many years must my evaluation cover?

(a) If you are a State formula grantee, you must conduct an evaluation, as your State commission requires.

(b) If you are a State competitive or direct Corporation grantee, your evaluation must cover a minimum of one year but may cover longer periods.

§ 2522.730 How and when do I submit my evaluation to the Corporation?

(a) If you are an existing grantee recompeting for AmeriCorps funds for the first time, you must submit a summary of your evaluation efforts or plan to date, and a copy of any evaluation that has been completed, as part of your application for funding.

(b) If you again compete for AmeriCorps funding after a second three-year grant cycle, you must submit the completed evaluation with your application for funding.

§ 2522.740 How will the Corporation use my evaluation?

The Corporation will consider the evaluation you submit with your application as follows:

(a) If you do not include with your application for AmeriCorps funding a summary of the evaluation, or the evaluation itself, as applicable, under § 2522.730, the Corporation reserves the right to not consider your application.

(b) If you do submit an evaluation with your application, the Corporation will consider the results of your evaluation in assessing the quality and outcomes of your program.

■ 8. Add subpart F to part 2522 consisting of § 2522.900 through § 2522.950, to read as follows:

Subpart F—Program Management Requirements for Grantees

Sec.

Subpart F—Program Management Requirements for Grantees

§ 2522.900 What definitions apply to this subpart?

Tutor is defined as someone whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group sessions and activities that build on the academic strengths of students in kindergarten through 12th grade, and target their academic needs. A tutor does not include someone engaged in other academic support activities, such as mentoring and after-school program support, whose primary goal is something other than increasing academic achievement. For example, providing a safe place for children is not tutoring, even if some of the program activities focus on homework help.

§ 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?

If the tutor is:	Then the tutor must meet the following qualifications:
(a) Is considered to be an employee of the Local Education Agency or school, as determined by State law. (b) Is not considered to be an employee of the Local Education Agency or school, as determined by State law.	Paraprofessional qualifications under No Child Left Behind Act, as required in 34 CFR 200.58 (1)(i) High School diploma or its equivalent, or a higher degree OR (ii) Proficiency test, as described in § 2522.930 of this subpart; and (2) Successful completion of pre- and in-service specialized training, as required in § 2522.940 of this subpart.

§ 2522.920 Are there any exceptions to the qualifications requirements?

The qualifications requirements in § 2522.910 of this subpart do not apply to a member who is a K–12 student tutoring younger children in the school or after school as part of a structured, school-managed cross-grade tutoring program.

§ 2522.930 What is an appropriate proficiency test?

(a) If a member serving as a tutor does not have a high-school diploma or its equivalent, or a higher degree, the member must pass a proficiency test that the program has determined effective in ensuring that members serving as tutors have the necessary skills to achieve program goals.

(b) The program must maintain in the member file of each member who takes the test documentation on the proficiency test selected and the results.

§ 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?

A program in which members engage in tutoring for children must:

(a) Articulate appropriate criteria for selecting and qualifying tutors, including the requirements in § 2522.910 of this subpart;

(b) Identify the strategies or tools it will use to assess student progress and measure student outcomes;

(c) Certify that the tutoring curriculum and pre-service and in-service training content are high-quality and research-based, consistent with the instructional program of the local educational agency or with State academic content standards;

(d) Include appropriate member supervision by individuals with expertise in tutoring; and

(e) Provide specialized high-quality and research-based, member pre-service and in-service training consistent with the activities the member will perform.

§ 2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?

(a) If your program does not involve tutoring as defined in § 2522.900 of this subpart, the Corporation will not impose the requirements in § 2522.910 through § 2522.940 of this subpart on your program.

(b) At a minimum, you must articulate in your application how you will recruit, train, and supervise members to ensure that they have the qualifications and skills necessary to provide the service activities in which they will be engaged.

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

■ 1. The authority citation for part 2540 is revised to read as follows:

Authority: EO 13331, 69 FR 9911.

■ 2. Amend § 2540.100 by redesignating paragraphs (f)(2) through (f)(5) as (f)(3) through (f)(6) respectively, and adding a new paragraph (f)(2) to read as follows:

§ 2540.100 What restrictions govern the use of Corporation assistance?

* * * * *

(f) * * *

(2) An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.

* * * * *

PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

■ 1. Revise the heading of part 2550 to read as set forth above.

■ 2. The authority citation for part 2550 is revised to read as follows:

Authority: 42 U.S.C. 12638.

■ 3. Amend § 2550.10 as follows:

■ a. By revising paragraph (b);

■ b. By revising paragraph (c);

■ c. By revising the last sentence of paragraph (d).

The revisions read as follows:

§ 2550.10 What is the purpose of this part?

* * * * *

(b) To be eligible to apply for program funding, or approved national service positions, each State must establish a State commission on national and community service to administer the State program grant making process and to develop a State plan. The Corporation may, in some instances, approve an alternative administrative entity (AAE).

(c) The Corporation will distribute grants of between $125,000 and $750,000 to States to cover the Federal share of operating the State commissions or AAEs.

(d) * * * This part also offers guidance on which of the two State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information for State commissions and AAEs.

§ 2550.20 [Amended]

■ 4. Amend § 2550.20 by removing paragraph (o).

■ 5. Amend § 2550.30 by revising the section heading to read as set forth below, removing paragraphs (c) and (d), and redesignating paragraph (e) as paragraph (c).

§ 2550.30 How does a State decide whether to establish a State commission or an alternative administrative entity?

* * * * *

§ 2550.40 [Amended]

■ 6: Amend § 2550.40 by removing paragraph (c).

§ 2550.70 [Removed and reserved]

■ 7. Remove and reserve § 2550.70.

■ 8. Amend § 2550.80 as follows:

■ a. Revise the first two sentences of the introductory text; and

■ b. Revise paragraph (j) to read as follows:

§ 2550.80 What are the duties of the State entities?

Both State commissions and AAEs have the same duties. This section lists the duties that apply to both State commissions and AAEs—collectively referred to as State entities. * * *

* * * * *

(j) *Activity ineligible for assistance.* A State commission or AAE may not directly carry out any national service program that receives financial assistance under section 121 of the NCSA or title II of the DVSA.

* * * * *

Dated: June 28, 2005.

David Eisner,

Chief Executive Officer.

[FR Doc. 05–13038 Filed 7–1–05; 8:45 am]

BILLING CODE 6050–28–P

Federal Register

Friday,
July 8, 2005

Part III

Department of Transportation

14 CFR Part 93
Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No.: FAA–2004–19411; SFAR No. 105]

RIN 2120–AI47

Reservation System for Unscheduled Arrivals at Chicago's O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a reservation system to limit the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the peak hours of 7 a.m. through 8:59 p.m., central time, Monday through Friday, and 12 p.m. through 8:59 p.m. central time on Sunday. This Special Federal Aviation Regulation (SFAR) is effective through October 28, 2005. This action is consistent with other FAA actions regarding scheduled arrivals at O'Hare, which combined together effectively reduce congestion and delays at the airport.

DATES: This SFAR becomes effective August 8, 2005.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations Services, Air Traffic Organization; telephone (202) 267–9424; facsimile (202) 267–7277; e-mail *gerry.shakley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

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 Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

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

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.*

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. If you are a small entity and you have a question regarding this document, you may contact a local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.cfm.*

Authority

The U.S. Government has exclusive sovereignty over the airspace of the United States.[1] Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the nation's navigable airspace. In this regard, the Administrator is required to assign by regulation or order use of the airspace to ensure its efficient use.[2]

The FAA's broad statutory authority to manage the efficient use of airspace encompasses management of the nationwide system of air commerce and air traffic control. To ensure the efficient use of the airspace, the FAA must take steps to prevent congestion at an airport from disrupting or adversely affecting the air traffic system for which the FAA is responsible. Inordinate delays of the sort experienced at O'Hare in late 2003 and much of 2004 can have a crippling effect on other parts of the system, causing significant losses in time and money for individuals and businesses, as well as the air carriers and other operators at O'Hare and beyond.

In 1968, under this statutory authority, the FAA designated O'Hare as a High Density Traffic Airport and through the High Density Rule (HDR) limited the number of takeoffs and landings at O'Hare.[3] Under 14 CFR 93.125, operators at each HDR airport including O'Hare must obtain a reservation or slot for each instrument flight rules (IFR) takeoff or landing. The HDR remained in effect at O'Hare for over three decades. At the time of the rule's sunset at O'Hare, scheduled peak-hour air carrier and commuter operations (including both arrivals and departures) were limited to 145 per hour, with ten additional reservations available for the "other" category of unscheduled operations.[4]

Each reservation for an unscheduled operation at an HDR airport is for a single arrival or departure flight on a specific day within a specific 30 or 60-minute timeframe. FAA Advisory Circular No. 93–1, "Reservations for Unscheduled Operations at High Density Traffic Airports," describes the procedures for obtaining a reservation beginning 72 hours in advance of the proposed arrival or departure. The FAA uses similar procedures during Special Traffic Management Programs that are initiated during special events such as major conventions or sporting events that cause temporary increases in airport demand.

Background

Since November 2003, O'Hare has suffered an inordinate and unacceptable number of delays as the result of over-scheduling at the airport, which was also having a crippling effect on the entire National Airspace System. In August 2004, the FAA intervened by ordering a limit on the number of scheduled arrivals at the airport during the peak operating hours of 7 a.m. through 8:59 p.m. effective November 1, 2004, so that the system could return to a reasonably balanced level of operations and delay.[5] On October 20, 2004, the FAA published a notice of proposed rulemaking (NPRM) seeking public comments on a proposed reservation system for unscheduled arrivals at O'Hare (69 FR 61708). Effective November 1, 2004, the same date the restrictions on scheduled arrivals took effect, the FAA implemented a corresponding voluntary reservation program for unscheduled arrivals using the general procedures followed during Special Traffic Management Programs and the HDR. Consequently, many aircraft operators are familiar with the procedures the FAA is adopting in this rule.

In the NPRM, we discussed the background events that led the agency to conclude that changes to the arrival system at O'Hare were necessary and

[1] 49 U.S.C. 40103(a).

[2] 49 U.S.C. 40103(b)(1).

[3] 33 Fed. Reg. 17896 (1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The regulatory limits of subpart K were lifted at O'Hare after July 1, 2002.

[4] 14 CFR 93.123(a)(2004). The "Other" class of users includes general aviation, charter, military, public aircraft, and other unscheduled operations by air carriers and foreign air carriers.

[5] Operating Limitations at Chicago Internaitonal Airport. Docket No. FAA–2004–16944.

provided a basis for the proposed SFAR. We specifically recognized that the primary reason for the unacceptable congestion and delays at O'Hare was due to increased arrivals of scheduled flights. We also recognized that the overall number of unscheduled arrivals at O'Hare has been stable. As each operation at the airport was disadvantaged and impacted by the recent congestion, each operation correspondingly contributes to the cumulative demand. The NPRM proposed retaining the historic average number of weekday arrivals at O'Hare during peak hours for unscheduled operations, which is four per hour. We did not propose an increase for unscheduled arrivals beyond this average, except for the ability to respond to favourable operating conditions by adding reservations when permissible; but we also did not propose reductions similar to those made by scheduled air carriers in March, June, and November of 2004.

The benefits achieved by the FAA's August 18 Order would dissipate if certain operations at the airport remained capped but other operations were permitted to grow. This rule will maintain the historical level of unscheduled operations at O'Hare and support other agency actions at O'Hare that address congestion and delay until additional capacity exists at the airport.

Discussion of Comments

We received 12 comments during the comment period and six additional comments after the closing date. Fifteen commenters opposed the proposed rule, including the National Air Carrier Association (NACA), Gannett, Alticor Aviation, Dow Chemical, National Air Transportation Association (NATA), National Business Aviation Association (NBAA), General Aviation Manufacturers Association (GAMA), Illinois Department of Transportation, City of Chicago, Thomas Cook Airlines, Blue Cross/Blue Shield of Tennessee, Mark Travel Corp., Apple Vacations, and two citizens. The Air Transport Association (ATA) supported the proposal. Two of the comments appear to be college writing assignments and do not provide any new information or suggestions.

Most of the objecting commenters support the need to require scheduling changes by those carriers conducting scheduled service. They argue that it is the increases in scheduled flights that caused the congestion and the proposed solution here is unfair to those conducting unscheduled operations. They contend that the proposal fails to address the nature of charter, business, and general aviation operations. They also argue that a significant number of passengers on unscheduled flights connect to scheduled flights at O'Hare and that it is not practical to operate at other Chicago area airports. Some commented that there should be exceptions for flights supporting aircraft maintenance and that small corporate aviation departments may be at a disadvantage getting reservations in comparison to the greater resources of larger aircraft operators. Furthermore, it is also argued that the proposal unfairly impacts the fixed base operator at the airport.

Public Charters

Four commenters (Thomas Cook Airlines, NACA, Mark Travel Corp., and Apple Vacations) requested that we redefine the term "unscheduled operator" and clarify that public charters are included in this term.[6] These commenters contend that although they are technically "unscheduled operators," they typically plan their flight and other tour arrangements anywhere from between 6 months and 1 year in advance in order to obtain gates, customs approval and secure ground handling agreements. Under Department of Transportation (DOT) regulations (14 CFR part 380), a public charter operator must file a prospectus with the DOT that includes the flight schedule, a listing of the origin/destination cities, dates, type of aircraft, number of seats and charter price for each flight. These four commenters also state that since these public charter flights may be scheduled up to one year in advance, it is extremely difficult to assume responsibility for arrangements such as gate handling, customs, hotel, and to only be able to obtain a flight reservation at a key airport such as O'Hare 72 hours in advance of the actual flight. For example, Apple Vacations provided an example of a pending prospectus that it filed for flights between December 2004 and December 2005, which covers 495 roundtrip operations (including weekends and off-peak hours) between O'Hare and Cancun, and O'Hare and various Caribbean and Mexican points. Moreover, DOT rules prohibit a charter operator from cancelling a public charter for any reason, except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled date of the departure of the outbound flight. (See 14 CFR 380.12.) Consequently, these commenters propose that public charter operators be permitted to obtain the arrival reservation six months prior to the planned flight or at the same time that the public charter operator files its prospectus at DOT.

We agree that public charters should be included in the unscheduled operation category at O'Hare, but find that these operations differ in certain respects from other unscheduled operations and thus require limited accommodations in this rule. In order to accurately define the type of operations included in the category of unscheduled operations, we have revised the definition of the term "unscheduled arrival" and have included the terms public charter and public charter operator. Both terms are defined in 14 CFR part 380, which sets forth DOT regulations governing public charters. Section 380.2 defines a public charter as a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator. This section also defines a public charter operator as a U.S. or foreign public charter operator. We are adopting these two terms as defined in 14 CFR part 380. In addition, we are removing from the definition of unscheduled operation, "irregular," as that term does not accurately reflect public or on-demand charters, and we are withdrawing the term "unscheduled operator" since it is unnecessary.

We also agree that the advance planning necessary for public charter operations and compliance with 14 CFR part 380 justifies certain relief from the proposed 72-hour window for obtaining an arrival reservation.

We have reviewed operational data for the three carriers that historically and regularly have conducted public charter operations at O'Hare (USA3000 Airlines, Ryan International Airlines, and TransMeridian Airlines). Recent data since October 2004 indicates that these carriers average approximately four peak day (Thursday) arrivals during the peak hours, mostly in the late afternoon and early evening hours. The majority of these flights operate on less than a daily basis and some operate to certain destinations on a seasonal basis. Mark Travel indicates it did not increase operations in the January to July 2004 period over the level it conducted in the same period in 2003 and NACA estimates there typically would be no more than six to eight peak period public charter flights on a given day.

In determining that four arrivals per hour accommodates the historic hourly

[6] In the NPRM, we proposed that the term, unscheduled operator include irregular charter, hired aircraft service, ferry flights and other non-passenger flights.

(weekday) level of unscheduled arrivals at O'Hare, we included public charter operations, other charter and unscheduled flights that did not appear in the Official Airline Guide. Under this rule, a minimum of 54 arrival reservations during the 14 controlled hours will be available for general aviation and other unscheduled arrivals. This is expected to be sufficient to meet the historic needs of general aviation, public charter, and other unscheduled operators.

Based on this, we have included a limited exception to the 72-hour period to accommodate the specific needs of public charter operations. This rule provides that public charter operators may obtain up to one reservation per hour up to six months in advance of the planned arrival. This limitation appears to be sufficient to accommodate the expected public charter demand, as described above. This provides public charter operators with opportunity to obtain a daily total of 14 reservations well in advance and the flexibility to schedule their arrivals throughout the peak period. Due to the DOT regulatory limits on cancellation of public charter flights within 10 days of the flight, cancellations of any advance public charter arrival reservations would be available for inclusion in the regular 72-hour reservation pool.

The Airport Reservation Office (ARO) process was developed to accept requests and issue reservations for a short window of time. For public charter operations that seek a reservation between the dates of 6 months prior to the scheduled operation and 72 hours prior to the scheduled operation, the FAA's Slot Administration Office is able to accept and process these requests. Carriers seeking reservations for public charter operations may follow the process proposed for any entity seeking a reservation 72 hours in advance, or they may contact the Slot Administration Office and provide the necessary information to receive a reservation up to 6 months in advance, if available.

Public charter operators must provide the Slot Administration Office with a certification that its prospectus has been accepted by the DOT in accordance with 14 CFR part 380 for the flight requiring a reservation; the call sign/flight number to be used for ATC communication by the direct air carrier conducting the operation; the date and time of the proposed arrival(s); origin airport immediately prior to O'Hare and aircraft type. A public charter operator must notify the Slot Administration Office of any changes to the above information once a reservation has been allocated. If each of the arrival reservations reserved for public charters has been allocated, a public charter operator may request a reservation through the ARO beginning 72 hours in advance.

Private Charter and Business Aviation

NATA claims that the proposed reservation system will have a serious, adverse impact on charter and business aviation, arguing the FAA has failed to consider the "on-demand" nature of these operations. NATA further argues that simply arranging the planned time for a particular flight should a reservation not be available is not a practical solution since travellers rely on general aviation to make a connecting flight out of ORD. The ability to easily connect to a flight out of Chicago is particularly problematic for travellers coming from remote communities.

The FAA finds NATA's comments in this regard unpersuasive. The agency believes that the vast majority of charter and business aviation can be easily accommodated under the reservation system implemented today. A brief review of the voluntary reservation system in effect since last November indicates that requests for reservations are fairly evenly distributed throughout the 72-hour period provided, with approximately one third of the reservations filled on each day. Thus, reservations are likely available for on-demand operations. Additionally, the FAA believes NATA has overstated the need to obtain a reservation at a moment's notice. Most travellers connecting to a scheduled flight out of ORD will have purchased a ticket for that flight well in excess of 72 hours before its departure. Likewise, most business meetings are scheduled sufficiently in advance that calling for an arrival reservation up 72 hours in advance of anticipated arrival should not pose a problem.

Military and Public Aircraft Operations

The Illinois Department of Transportation commented that flights operated by and for the State of Illinois should be accommodated notwithstanding the reservation limit, and that State business often requires a tight time schedule utilizing the most efficient and advantageous airport and ground transportation system. The City of Chicago requests that since O'Hare handles very few military and public use aircraft flights, these operations should be exempted from the limits due to the critical nature of their schedules.

Historically under the HDR, military operations and public use aircraft operations were subject to the reservation requirement. As stated previously, this rule does not limit the airport to fewer than the average number of unscheduled operations, including military and public aircraft operations, that are currently conducted or have been conducted since the HDR limits were eliminated in July 2002. This rule does, however, spread these operations over several hours.

Military and public aircraft are subject to this final rule and are expected to obtain reservations for most flights through the adopted procedures using e-CVRS or the ARO. As provided for in proposed section 6.c. (now codified as section 7.c.), the FAA will accommodate non-emergency flights in support of national security, law enforcement, or similar requirements above the administrative limit with prior approval by the FAA. We intended to include military operations and public use aircraft operations in paragraph 7.c. However, we are clarifying the regulatory text by specifically listing these operations. We anticipate these exceptions to be limited. Since the operations must be approved in advance by the ARO, changes to proposed arrival times may be necessary to minimize impacts at the airport if needed. We do not support a blanket exception for flights of this nature. The incremental addition of just a few flights during peak hours cumulatively affects the airport. Carriers conducting scheduled operations have had to either reduce operations or limit growth to reach the manageable level that exists today and most of the unscheduled arrivals at O'Hare will be covered by this rule. While the FAA does not expect or intend for unscheduled operators at the airport to be unfairly burdened, it certainly is not fair to categorically exclude all military and public aircraft flights while limiting general aviation and others with similar time or operational constraints. The public interest is served by permitting access for these flights but they still remain subject to the rule.

Number of Arrival Reservations, Applicable Hours, and Other Operational Issues

Several commenters indicated the number of arrivals should be increased to six per hour (Apple Vacations, NACA and Thomas Cook Airlines) based on the relative percentage of scheduled and unscheduled reservations available under the HDR. As indicated earlier, we based the average of four arrivals per hour on recent, historic average unscheduled arrivals. While comments were submitted regarding the impact that the closure of Meigs Field has had

on O'Hare, traffic previously conducted at Meigs has already been accommodated at O'Hare and other airports in the area, and is already included in the determination of the four arrivals per hour. However, historic usage after the slot controls were eliminated does not support establishing a pool of six unscheduled arrivals per hour simply because scheduled arrivals have increased during the same time. Thus, we do not find a basis to increase the hourly allotment of four reservations to six.

The City of Chicago requested we include some flexibility in the rule for the unscheduled operations arrival rate when unique local events are taking place in the Chicago area. The City further requested that the reservation program commence at 8 a.m. rather than 7 a.m., as proposed in the notice. The City contends that moving the restrictions an hour later will allow business executives to schedule a morning meeting in the 8:30 a.m. or 9:30 a.m. time periods and not be in doubt about their ability to make the meeting because they would not need to get a reservation. The City argues that air traffic tends to be lower in the 7–7:59 a.m. timeframe in comparison to the rest of the day.

We have reviewed the proposed hours of limitations and are eliminating the proposed restrictions on Saturdays and until noon on Sundays since total demand during those periods is typically within average airport capacity. We are concerned that eliminating all restrictions in the 7 a.m. hour for unscheduled arrivals, and possibly a corresponding elimination for scheduled arrivals, would lead to demand immediately before the 8 a.m. hour, which could place the airport in an early morning delay situation. While we have decided to retain the reservation requirement for weekdays beginning at 7 a.m., the rule does provide that the FAA may make additional reservations available should capacity exist and significant delays not be expected. The FAA intends to use that authority to provide opportunities for reservations for unscheduled operations when arrivals set aside for scheduled operations are not expected to be used; when capacity exists in the system; and when events or other local circumstances warrant special consideration. We believe the flexibility to add reservations in positive operating conditions could allow greater access by general aviation and other unscheduled operations without the risks of having to implement restrictions later in the day.

The General Aviation Manufacturers Association (GAMA) commented that visual flight rules (VFR) flights should be accommodated as space is available in real-time, and should not require an advance reservation. The FAA's review indicates the number of unscheduled VFR arrivals at O'Hare is minimal, and since they occur when operating conditions are favorable, typically there is capacity to accommodate additional operations. FAA air traffic control procedures also provide that these VFR flights will be accommodated as traffic and workload permits. Therefore, the limits on unscheduled VFR arrivals will not be necessary and the final rule excludes these flights. GAMA further comments that arrival reservations should not apply to any runway less than 5,000 feet in length that does not intersect with another runway greater than 5,000 feet in length. The FAA established historic levels of arrivals at O'Hare based on experience with the airport acceptance rates, different runway configurations, and operating conditions. We do not find it feasible to exempt unscheduled arrivals utilizing specific runways since an operator could not be certain it would be cleared to land on a qualifying runway until shortly before arrival.

NACA also requested that the FAA accommodate flights that want to arrive at O'Hare as a result of designating O'Hare as an alternate airport for flight planning purposes. There are various types of restrictions that may be applicable to a particular airport. Due to runway configuration, certain aircraft may not be able to operate at an airport. There may be noise restrictions, departure procedures, and other operational procedures that must be factored into flight planning purposes and the selection process of an alternate. This reservation system at O'Hare must be considered as such a restriction. It is a traffic management tool and if an unscheduled IFR operation intends to use O'Hare as an alternate, that operator must be prepared to meet all the requirements necessary to operate at the airport, including a reservation. While O'Hare may be the preferable choice as an alternate from the operator's view, it is not feasible to exacerbate the cumulative impacts of demand by both scheduled and unscheduled service. The reservation requirement unquestionably does not apply in the case of an emergency. However, while not prepared to categorically permit the regular use of O'Hare as an alternate airport and not have the required reservation, we recognize there may be circumstances when safety or other considerations lead an operator to arrive at O'Hare without a reservation and current regulations provide for those cases.

Foreign Air Carriers

NACA opposes exclusion of unscheduled flights by foreign air carriers from the requirement to obtain a reservation to arrive at O'Hare and comments that excluding foreign fifth freedom charter operators to abide by the reservation system will give foreign charter air carriers and enormous competitive advantage over U.S. charter carriers.

Given our decision on public charter operations, which is the main focus of NACA's concern, we do not find that the exclusion of foreign air carriers from the provisions of this rule will result in any competitive advantage over U.S. carriers conducting charter operations. Under the adopted provisions for public charter operations, the reservation is requested by and allocated to the public charter operator, regardless of whether the charter is operated by a U.S. or foreign air carrier. The public charter operator retains the discretion to select the direct air carrier. Thus, this rule does not provide any advantage to a public charter operator to select a U.S. certificated carrier or a foreign air carrier.

With respect to non-public charter operations by foreign air carriers, which also will not require a reservation, these operations account for a de minimus level of activity at O'Hare and are either covered by bilateral agreement between the foreign carrier's homeland and the United States (to which NACA does not object) or are authorized by the Department of Transportation subject to public interest finding. Therefore, we do not believe that excluding these operations from the reservation requirement will have an adverse impact on U.S. charter carriers.

Effective Date

On March 21, 2005, the FAA extended the August 18, 2004 Order on scheduled arrivals at O'Hare through Saturday, October 29, 2005 (70 FR 15540; March 25, 2005). This SFAR is effective through Friday, October 28. 2005, since the adopted limits for unscheduled arrivals do not apply on Saturdays. The FAA also issued an NPRM on March 18, 2005, inviting comment on alternatives to address congestion at O'Hare, ranging from letting the current limits on scheduled and unscheduled arrivals expire, to adopting limitations on operations through April 5, 2008, which is when additional capacity might become available or market-based approaches are implemented. (70 FR 15520; March

25, 2005). The FAA expects that similar actions on limitations and the potential duration would be taken for both scheduled and unscheduled operations. If a rule is adopted to limit scheduled arrivals at O'Hare, the FAA would consider extending this SFAR for a similar duration. Several commenters, including NATA, NBAA, and some of the corporate aircraft operators, raised concerns that the reservation system was a reimposition of the expired HDR. NBAA notes that the HDR began as a temporary measure but remained in place for many years. NBAA comments that the rule should only apply for 6 months. GAMA recommends that the FAA establish a formal review process, perhaps on a two-year basis, to determine if limits are still needed.

We agree that a sunset provision is appropriate and this rule will expire on October 28, 2005. The NPRM on alternatives to address congestion at O'Hare after that date will consider issues such as the duration of any proposed limits and periodic reviews such as GAMA suggested. The agency will consider whether this SFAR should be extended if necessary.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0694.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0694.

This final rule establishes a reservation system to limit the number of unscheduled aircraft arrivals at Chicago's O'Hare International Airport (O'Hare) during the peak hours of 7 a.m. through 8:59 p.m., central time, Monday through Friday, and 12 p.m. through 8:59 p.m. central time on Sunday. We received no comments from the public that specifically discussed information collection.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

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

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination 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, that they be the basis for 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).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it be included in the preamble and a full regulatory evaluation cost benefit evaluation need not be prepared. The FAA did make such a determination for this final rule.

This final rule will apply to unscheduled instrument flight rule (IFR) arrival operations at O'Hare. For purposes of this rule, unscheduled arrivals are those conducted as public, on-demand and other charter flights, hired aircraft service, ferry flights, general aviation, and other non-passenger flights. In this economic evaluation, we have considered the effects on operators of on-demand charters, and public charters both domestic and foreign, general aviation, military, and public use flights.

The FAA used the Air Traffic Control System Command Center's (ATCSCC) Enhanced Traffic Management System (ETMS) data to determine the historical count of unscheduled arrivals at O'Hare. The ETMS database records all flights with flight plans conducted at the airport. The unscheduled flights are defined to include all flights not listed in the Official Airline Guide (OAG) reported in FAA Flight Schedule Data System (FSDS) database. Since this system is updated daily to reflect any changes, it gives an accurate list of scheduled operators and the number of scheduled arrivals planned for O'Hare. Therefore, O'Hare's unscheduled demand is determined by subtracting all OAG scheduled flights from the total flights reported in the ETMS database.

The FAA analyzed both annual and monthly arrivals at O'Hare over the 2000–2005 periods. We found that unscheduled arrivals are a small and stable share of all flights conducted at O'Hare. As there is little variation in the flight arrival distribution by major passenger group across the monthly arrivals from January 2004 through March, 2005, we used the most current month, March, 2005, for the detailed discussion that follows. Table 1 shows O'Hare's monthly and average daily arrival count for scheduled and unscheduled arrivals by major passenger group during March 2005.[7] These unscheduled flights were conducted by on-demand air taxis, public charters, general aviation, military, and public use operators. Daily, there were 1,352 arrivals, with 1,322 scheduled arrivals by domestic and foreign operators, accounting for 97.8 percent of the total arrival flights at O'Hare. There were 30 daily unscheduled arrivals, which includes 4 unscheduled cargo arrivals, accounting for 2.2 percent of the total O'Hare arrivals.

[7] The FAA considered monthly data from January 2000 through March 2005. The comparison with other months indicates the results are similar to the March 2005 data.

TABLE 1.—DISTRIBUTION OF O'HARE MONTHLY AND DAILY ARRIVALS: MARCH 2005

	Number of operators	Actual arrivals	Average daily arrivals	Hourly arrivals for 14-hour day	Percent
Domestic Scheduled Arrivals	39	39,520	1,275	91.06	94.3
Scheduled Passenger/Cargo	29	39,001	1,258	89.86	93.1
Scheduled Cargo Only	10	519	17	1.20	1.2
Domestic Unscheduled Arrivals	45	932	30	2.15	2.2
Unscheduled Passenger/Cargo	39	820	26	1.89	1.9
Unscheduled Carrier Cargo Only	6	112	4	0.26	.3
Foreign Scheduled Arrivals	43	1,451	47	3.34	3.5
Scheduled Passenger/Cargo	39	1,342	43	3.09	3.2
Scheduled Cargo Only	4	109	4	0.25	.3
Total O'Hare Arrivals	127	41,903	1,352	96.55	100.0

To estimate the compliance cost of this rule, we first identify who would incur the potential costs. In particular, we wanted to identify operators flying for commercial reasons where arrival constraints could be burdensome. Private, noncommercial operators have substantially more arrival flexibility than a public charter or air taxi operator. To identify the operators that may be affected by this rule, we looked at individual flights in the ETMS database for March 2005. We identified about 45 operators conducting unscheduled arrivals at O'Hare.[8] General aviation operations are the largest share of the 932 arrival flights during March 2005. The general aviation operators conducted 431 unscheduled arrivals, or nearly 46 percent of the total unscheduled arrivals. Analysis of monthly data suggest the number of general aviation flights at O'Hare have remained stable. Besides the general aviation operators, we identified three public charter operators conducting 228 unscheduled arrivals, three military or public use operators conducting 9 unscheduled arrivals, and about 36 on-demand air taxis providing passenger or cargo flights, which accounted for 264 unscheduled arrivals.

On-demand Air Taxi and Public Charter Flights—These operators are typically, either on-demand air taxi flights that operate unscheduled air transport service for hire under 14 CFR part 135, or public charter flights governed by 14 CFR part 380. Most on-demand air taxi operators provide air transport services to serve customers who desire a flexible schedule.

Public charters provide low-cost air transport service with fairly firm, future travel schedules. Public charter flights may include only the flights, or be sold as a package and include hotels, guided tours, and ground transport. The Department of Transportation (DOT) requires public charter operators to register with the Office of Aviation Analysis, Special Authorities Division and to file a prospectus before they operate, sell, or receive money from any prospective participant. The prospectus (14 CFR 380.25) must spell out all the terms of the contract with a prospective participant as well as all travel schedules and itineraries. While public charter flights and ground arrangements are subject to change, operators cannot cancel a public charter fewer than 10 days before departure, except under restrictive rules. Under this final rule, the FAA provides a limited waiver of the 72-hour advance reservation provision for public charters. Under this final rule, one arrival reservation per hour can be requested as early as 6 months before the arrival date.

General Aviation Flights—General aviation at O'Hare usually are private, corporate, or business flights. These general aviation flights account for a small share of all flights at O'Hare, but represent the largest share of unscheduled arrivals at O'Hare. General aviation operators have substantially more arrival-time flexibility than the for-hire operators.

Of the total 932 unscheduled arrivals in March 2005, 431 arrivals were classified for the purposes of this analysis as general aviation. This is less than 1 flight per hour for the 14-peak hour periods applicable to this rule. Foreign Flights—The rule will not affect foreign carriers. Under this rule, foreign public charters will operate under Part 380 in the same manner and conditions as U.S. registered operators. The rule provides limited exception to the 72-hour advance reservation requirement for public charter operators. Given the special filing requirements for public charters, the FAA will allow operators to request one arrival reservation per hour and allocation up to 6 months, rather than only 72 hours, before the flight.

Military and Public Use Flights—No significant change is expected for military or public use operations. The arrival limit is consistent with the historical number of unscheduled arrivals, including those of military and public use aircraft. FAA intends to grant non-emergency flights in support of national security, law enforcement, or similar requirements above the arrival limit on a case-by-case basis with prior FAA approval. However, the FAA does not intend to provide a blanket exception for this category of user and it is expected that most of these flights will obtain reservations using the same procedures as other unscheduled operators.

Visual Flight Rule Arrivals—The hourly limit for unscheduled arrivals applies to IFR arrivals, not to unscheduled VFR arrivals. The FAA Air Traffic Control procedures currently allow VFR flights under favorable weather and ATC conditions.

Economic Impacts on Unscheduled Operators

The FAA evaluated the following three cost categories that may occur because of this final rule to assess the potential impact on unscheduled operators and their passengers:

- Unscheduled reservations requirements under the 72-hour advance reservation procedures
- Potential lost revenue because of restricted flights at O'Hare
- Use of alternative airports—ground transport and passenger's value of time costs

The summary results of these potential costs suggest that this rule will have a minimum impact on the affected entities. The private reservation costs will be less than $2.00 per reservation, or only $14,611 for the 6-month period of this rule. The FAA also estimated the public reservation costs resulting from this rule will be $16,119 for the 6-month

[8] The general aviation flights were aggregated and not identified by individual operator in the ETMS database, which is used in this regulatory evaluation to identify scheduled and unscheduled operations.

period used in this analysis. The FAA will be able to grant arrivals for nearly all unscheduled operators with modest changes to arrival time. If the available reservations are not acceptable to the operator, they will still have the choice of using an alternative airport. For purposes of estimating the upper limit of potential costs of this rule, the FAA estimates the potential costs for ground transportation and passenger value of time for using an alternative airport such as Midway will be $9,600 or $160 per round-trip for the affected passengers. However, since the historical number of unscheduled arrivals at O'Hare has been 4 or less, FAA expects only a few flights may use an alternative airport. Further, unscheduled operators will not lose revenue because of this rule, since the total unscheduled flights to Chicago will not be reduced. Therefore, the FAA expects the potential costs incurred by unscheduled operators, their passengers, and the FAA because of this rule will be de minimus. A detailed discussion of each cost category is provided below.

Reservation Costs for Unscheduled Arrivals

For this analysis, the FAA estimated the total private and public costs to place reservations for unscheduled arrivals would be $30,730. Historically under the high-density rule (HDR) at O'Hare, unscheduled operators could request reservations up to 48 hours before the arrival. It was extended to 72 hours in 2002. Under this final rule, unscheduled arrivals at O'Hare may request a reservation beginning 72 hours in advance, except for public charters, who may request reservations beginning 6 months before the arrival date.

The reservations made 72 hours in advance or less must be made with the FAA's Airport Reservation Office (ARO) using the Enhanced Computer Voice Reservation System (e-CVRS), which is already in use at O'Hare and other designated airports. Reservations will be assigned on a 30-minute basis, with not more than two arrivals in a half-hour period. Operators can request a reservation using touch-tone telephone, an Internet web interface using electronic information technology, automated telephone systems and calls direct to ARO. As these systems are already in place, the unscheduled reservations need no new capital or equipment. Reservations requested up to 6 months in advance are made through the Slot Administration Office.

For the approximately 6-month period for which the proposal would be in effect, we estimate these operators will make more than 10,000 reservations, requiring more than 20,000 minutes (340 hours), and costing $14,611. This private cost estimate for the reservation requirement equals the added labor costs to place reservations for unscheduled arrivals. The FAA expects pilots or flight engineers to make the unscheduled flight reservations. The pilots of unscheduled flights perform many non-flying duties including record keeping and scheduling. The fully burdened rate is $43.01 an hour for airline pilots, copilots, flight engineers, and those of commercial pilots for unscheduled air transport using the Bureau of Labor Statistics' Occupational Employment Statistics series. The FAA estimates each reservation will take two minutes. At the fully burdened labor rate of $43.01 an hour the reservation costs would be less than $2 per reservation for unscheduled flights. Therefore, the FAA expects the costs to unscheduled flight operators will be small.

For the same two-minute reservation, we estimated public cost based on a GS 13-Step 5-level employee ($47.44 an hour) approving the reservation. At a fully burdened rate of $47.44 an hour, the total public costs will be $16,119.

Potential Lost Revenue Due to Limits on Unscheduled Arrivals

The FAA does not expect operators of unscheduled arrivals at O'Hare to lose revenue because of the hourly limit during the restricted periods. The limit of four arrivals an hour during the restricted hours does not reduce the historic average number of unscheduled arrivals at O'Hare, but instead, requires operators to spread the arrivals more evenly throughout the service day. The FAA does not expect the unscheduled arrivals to be affected, since the limit set in this rule matches the long-term hourly average.

Under the reservation procedures, the FAA will offer operators the closest available half hour, if the requested reservation is not available. Given the historical dispersion of arrival flights throughout the day at O'Hare, the FAA expects most reservation requests can be accepted.

We initially computed the historical average hourly arrivals per day of week using the unscheduled arrival data from FAA's ETMS data system, for January 4–July 24, 2004, the 7-month period preceding FAA's August Order for scheduled operations. The average hourly arrivals ranged from 2.7 to 4.0 arrivals an hour, depending on the day of week. Using the March 2005 ETMS data shows the actual unscheduled arrivals at O'Hare are within the four hourly limit.[9] While some past hourly arrivals exceeded the hourly limit set in this final rule, on average, arrivals at O'Hare have been within the 4 hourly limit. If future arrival reservation requests exceed the limit, these flights may shift to other times in the restricted period, when flights fall below the limit or use alternative airports close to O'Hare.

The hourly distribution of unscheduled arrivals shows there are unused arrival slots throughout the service day. Unscheduled operators can shift the arrival time or day to use these available arrival slots, or arrive before 7 a.m. Therefore, the limit of four unscheduled arrivals an hour should not decrease the number of daily, unscheduled operations. Further, ATC may allow more flights when they decide weather and conditions are acceptable. The FAA concludes that this final rule will not reduce the number of daily, unscheduled arrivals at O'Hare.

Costs of Using Alternative Airports

The FAA has also considered potential costs to operators and passengers if they cannot obtain arrival reservations at their desired time at O'Hare. Since the FAA will grant reservations based on a first-come first-served basis, it is possible some desired arrival times at O'Hare will not be available. The costs of using alternative airports, if any, would most likely be incurred by the passenger as a pass through from the operator.

To identify the likely occurrence of using an alternative airport, FAA used the results of g ATC's ETMS data analysis This analysis provided the average daily arrivals by hour and day of week for the 7-month period from January 2004 through July 2004. During this period, the average unscheduled arrivals exceeded the 4-hour limit only 8 times, or .7% of the periods covered. Further, given the 30 average daily unscheduled arrivals in March 2005, suggest there may be some unused reservations during several of the 14-hour peak periods. Therefore, FAA expects only a few flights will choose to land at an alternative airport. However, if the alternative arrival time is not acceptable, then the operator can choose to use another airport close to O'Hare, such as Chicago's Midway Airport. This may be the case if the passenger needs direct access to O'Hare for a connecting flight or other reasons. These passengers may incur the added costs of ground

[9] March 2005 data is representative of the monthly flights in other periods from January 2004 through March 2005.

transport and lost passenger time to travel to O'Hare.

O'Hare is about 22 miles (about 40 minutes in travel time) from Midway. In this case, the passenger will incur the costs of ground transport and passenger time to travel by airport shuttle, local train, or limousine service from the alternative airport to O'Hare. Airport shuttles between Midway and O'Hare typically cost less than $20 per trip; the local train between Midway and O'Hare costs $2.50 per trip; and private limousine service cost is expected to be less than $100 per trip. The FAA estimates the passenger's value of time[10] to be to $28.60 an hour. Therefore, for a 40-minute trip, the value of passenger time for the extra travel between Midway and O'Hare will be about $20. Our analysis indicates the average cost would be $160 per trip for each affected passenger. FAA estimates the total costs would be $9,600 for 60 passengers over the 6-month period for 15 flights, each carrying an average of 4 passengers. FAA believes the use of an alternative airport will not be required very often, since the actual unscheduled arrivals at O'Hare have consistently remained at 4 or less arrivals per hour. In summary, the FAA expects this final rule will help reduce system delays and the associated costs, while the economic costs of arrival restrictions will be small. As the rule will restrict only those unscheduled arrivals under instrument flight rules, all visual flight rule flights can continue as before. As discussed above, we estimated the total private reservation costs of this final rule to be $14,611 and so will be *de minimis*. The public reservation costs will be $16,911. After examining O'Hare's hourly operations, the FAA determined that all unscheduled arrivals at O'Hare can be accommodated and meet the constraint of four arrivals an hour. However, some planned arrival times may need to be shifted somewhat to available reservation times. Some may choose to arrive at an alternative airport close to O'Hare. While these costs, are unlikely, the FAA estimates that if they were applicable, they would be about $9,600 for the 6 month period, and so *de minimis*. Further, the FAA has made exceptions for the unique circumstances of public charters and plans to grant added reservations for unscheduled operations if the ATC weather, capacity, and delay conditions at O'Hare are favorable. Thus, this rule provides system delay benefits at a minimal cost.

[10] Values for passenger time are provided in "Treatment of Values of Passenger Time in Air Travel" in the FAA Report, Economic Values for FAA Investment and Regulatory Decisions: A Guide, June 2004.

Regulatory Flexibility Determination

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 solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Just as in the initial regulatory flexibility analysis the FAA expects there will be a substantial number of small entities affected by this final rule, however, the economic effect will be insignificant.

Final Rule Summary

This rule will address the unacceptable number of delays Chicago O'Hare International Airport. Under this final rule (1) unscheduled operations are limited to four arrivals per hour during the period 7 a.m. through 8:59 p.m. central time, Monday through Friday, and 12 through 8:59 p.m. on Sunday; (2) unscheduled operators must request arrival reservations, beginning 72 hours in advance; and (3) one arrival reservation per hour is available to public charter operators beginning 6 months before their planned arrival times. This final rule will ensure the effectiveness of the flight limits placed on scheduled arrivals at O'Hare as set up in the Administrator's Order issued August 18, 2004. This final rule will be in effect beginning 30 days after this final rule is published through October 28, 2005. The FAA's economic assessment covers a 6-month time period.

Public Comments

There were two comments about the FAA small entities determination in the initial regulatory analysis. The U.S. Small Business Administration filed a comment about the methodology and findings in the preliminary Regulatory Flexibility Determination. The FAA responded directly to SBA and in the discussion below. In addition, the National Air Transportation Association raised similar concerns about how FAA addressed the requirements of the Regulatory Flexibility Act.

FAA Response: The FAA has conducted a rigorous examination of the possible impacts of this final rule on small entities. The FAA has considered both the efficiency and equity of limiting flights of unscheduled operators while setting the arrival limits for scheduled operators under the August 2004 Order. In determining the effect of this final rule on small entities, we have estimated the historical number of unscheduled arrivals and reviewed the hourly distribution of these flights throughout the service day.

The FAA conducted analysis first for the August Order, which placed a cap on scheduled operations at O'Hare. Then, we conducted another analysis for the Notice of Proposed Rule Making (NPRM: Congestion and Delay Reduction At Chicago's O'Hare International Airport, **Federal Register**, March 22, 2005 (70 FR 15520; March 25, 2005)). During the initial analysis in support of the August 2004 order, the FAA examined airport arrivals over the 140 weekdays from November 3, 2003 through May 14, 2004. We found that O'Hare had an average of 90 arrivals an hour in all weather. This included an average of 86 scheduled and four unscheduled flights during the peak periods from noon though 6:59 p.m., when the arrival demand at O'Hare is highest. Therefore, the limits set for unscheduled arrivals measure the maximum average capacity of the airport during various weather, runway, and operating conditions. The FAA reexamined the average number of unscheduled flights at O'Hare for the 7-month period, January 4–July 24, 2004. We found the average of four unscheduled arrivals continued to be an accurate and stable estimate of unscheduled operations at O'Hare. Based on the historical count of unscheduled arrivals and the hourly distribution throughout the service day, we expect the hourly arrival limit set in

this rule to allow nearly all the unscheduled arrivals. For a few arrivals, some operators may have to adjust their arrival times. More recently, in March 2005, FAA reviewed the unscheduled operations at O'Hare. Consistently, the number of unscheduled arrivals have been stable and within the four-hour limit established in this rule. This final rule does not apply to unscheduled flights that fly Visual Flight Rules (VFR) procedures. As discussed in the regulatory evaluation, VFR arrivals can continue to operate, as before. Many of these operators are likely to be small entities.

Number of Affected Entities

The FAA estimated the number of entities affected by this proposed rule, as well as which of these entities may be small entities.

The U.S. Bureau of Census, 2002 Economic Census for Air Transportation (issued July 2004) estimates there are nearly 2,173 establishments providing unscheduled air transportation service in the United States. Of these establishments, there were 1,455 providing unscheduled chartered passenger air transportation; 240 providing unscheduled chartered freight air transportation, and the remaining 478 providing other unscheduled air transportation services. Under the U.S. Small Business Administration's industry size standards by North American Industry Classification System (NAICS) codes, unscheduled chartered passenger air services (NAICS 481211) and unscheduled chartered freight air transportation services (NAICS 481212) with fewer than 1,500 employees (except offshore marine air transportation services with less than $23.5 million in annual revenue), and other unscheduled air transportation services with annual revenue of less than $6 million, are classified as small entities.[11]

In 2004, the FAA reported the results from a national survey of the air taxi industry, comprised mostly of establishments providing on-demand flights.[12] The survey results, which used 1997 Census data, identified more than 3,000 unscheduled operators and found that most of these operators were small entities. Over 50 percent of the passenger and cargo operators surveyed had five or fewer employees; and fewer than 50 unscheduled operators had more than 100 employees. Further, the largest number of operators had between 1–5 aircraft.

While any of these operators may request reservations to land at O'Hare, the FAA identified about 45 unscheduled operators that were doing business at O'Hare in March 2005. Of the 45 operators providing unscheduled arrivals at O'Hare, most are expected to be small entities. This finding is consistent with results of the 2002 Economic Census for the Air Transportation industry, and with recent results of the national survey of air taxi operators. The national survey reported that 90 percent of unscheduled operators have fewer than 25 employees, operate less than 10 aircraft, and have annual revenue less than $5 million.

We identified the unscheduled operators arriving at O'Hare in the following manner. First, we obtained the total number of operations by operator from the FAA's Enhanced Traffic Management System (ETMS) database, and the scheduled arrivals published in the Official Airline Guide (OAG) database. By subtracting scheduled arrivals from the total arrivals, what remains is the unscheduled operations. Next, we excluded unscheduled operators that exceeded small size standards established by the U.S. Small Business Administration of 1,500 employees for unscheduled passenger and freight operations, and $6 million for other unscheduled operations.

To confirm whether the unscheduled operators at O'Hare were small entities, the FAA used the Department of Transportation Form 41 reports and recently published corporate financial reports of carriers operating unscheduled arrivals. Of the nearly 45 unscheduled operators at O'Hare, the FAA identified 16 unscheduled passenger operators and 8 cargo operators that are classified as small entities according to the size standards of the U.S. Small Business Administration. Many of the general aviation operators are also expected to be small. Given the affected small entities identified in March 2005, more than 100 small entities are likely to be affected by this final rule over the six-month compliance period. On this basis, the FAA concludes there will be a substantial number of small entities likely to be affected by this final rule.

Cost Impact and Reporting and Recordkeeping Requirements

While the FAA expects there will be a substantial number of small entities affected by this final rule, the economic effect is expected to be small.

Under the reservation system, unscheduled operators will be granted reservations on a first-come, first-served basis during a given 30-minute segment. If a reservation request for a specific 30-minute reservation is not available, these operators will be offered the closest, available reservation times. Therefore, these unscheduled operators will have the alternative and discretion of shifting the unscheduled operations to the next available reservation, access an alternative airport, or even arrive before or after the restricted flight periods. Given the hourly distribution of unscheduled arrivals, the FAA expects that most operators will be able to find an acceptable arrival reservation. The FAA intends to allow more arrivals during the restricted periods, whenever Air Traffic Control determines the weather, and delay conditions are favorable.

Under this final rule, unscheduled arrivals at O'Hare will be required to place reservations beginning 72-hours in advance. Public charter operators may request a reservation up to 6 months prior to operation. The FAA has made one reservation per hour available for such requests. These requests are filed with the FAA Slot Administration Office using established procedures and equipment. The reservations for unscheduled flights must be made with the FAA's Airport Reservation Office (ARO) using the Enhanced Computer Voice Reservation System (e-CVRS). This reservation system is already in use at O'Hare and other designated airports. The reservations could be made using touch-tone telephone, an Internet Web interface using electronic information technology, automated telephone systems and calls directly to ARO. Thus, the unscheduled reservation system would not require new capital or equipment.

These reservation costs are estimated to be less than $2.00 per reservation, or $14,611 for the 6-month period used in this analysis. The FAA assumed pilots or flight engineers would make the unscheduled flight reservations. The pilots of unscheduled flights such as general aviation, charter operators, and business aircraft operations perform many non-flying duties, which include

[11] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification System (NAICS) Codes, January 28, 2004.

[12] The survey included all on demand operations with rotorcraft; all on-demand passenger operations with airplanes of 30 passenger seats or less and a maximum payload capacity of 7,500 pounds or less; scheduled passenger operations of less than five round trips per week on a least one route between two or more points according to the published flight schedule; and aircraft operations with nine passenger seats or less and a payload under 7,500 pounds used in scheduled passenger operations (i.e. five or more round trips between two or more points) that can also operate under the on-demand regulations.

recordkeeping and scheduling. The FAA estimates it would take each operator 2 minutes per reservation at the fully burdened labor rate of $43.01 per hour (the average of annual earnings data for airline pilots, copilots, and flight engineers, and those of commercial pilots for unscheduled air transportation provided in the Bureau of Labor Statistics' Occupational Employment Statistics series). For the 6-month period used in this analysis, the reservation costs would be $14,611, assuming the operators make more than 10,000 reservations, requiring more than 20,000 minutes (340 hours) over the 6-month period the rule would be in effect. Thus, the costs would be less than $2 per reservation for the individual respondents or recordkeepers making the reservations for unscheduled flights.

Looking at the average number of unscheduled arrivals for the 30-day period of August 2004, the FAA found an average of 3 unscheduled arrivals per hour. Again, examining the historical arrivals of unscheduled operations by day of week during the January 4–July 24 period, suggests that for most days of the week, there will be four or fewer arrivals per hour. The average daily arrivals by day of week ranged from 2.7 to 4.0 hourly arrivals during this 7-month period. During March 2005, there were approximately 2 unscheduled arrivals for all operators during the 14-hour periods the limit is in effect during the weekday. The FAA expects that unscheduled operators, including each of the small entities, can continue operating at their historical levels under this final rule. Therefore, it is unlikely this rule will preclude small entities from operating at O'Hare. However, they may be required to spread their arrivals more evenly throughout the service day.

Further, if small operators are restricted under this rule, then, they may choose to arrange to arrive at alternative airports, close to O'Hare. If so, they will incur ground transportation costs of $9,600 over 6 months. In this circumstance, the FAA expects the passenger, and not the firm, to incur the added ground transportation costs, as well as the value of passenger time. Even so, these transportation costs are minor for a passenger of an air taxi. Airport shuttles between Midway and O'Hare typically cost less than $20 per trip; the local train between Midway and O'Hare cost only $2.50 per trip; and private limousine service cost are expected to be less than $100 per trip. The value of passenger time to travel to and from an alternative airport such as Chicago's Midway Airport would be about $20. FAA estimates the average costs to the passenger of using an alternative airport would be about $160. Thus, FAA does not expect small operators or their passengers to incur significant economic costs because of this rule.

Alternatives and Efforts To Minimize Economic Impact

After considering comments, the FAA has changed proposed reservation rules for public charter service. These operators have unique circumstances. Because public charters are required under 14 CFR part 380 to give a notice of cancellation before 10 days of the planned departure, the FAA has made some arrival reservations available for request up to 6 months prior to operation. Because this rule is needed to ensure the total number of arrivals at O'Hare will not result in unmanageable delays, the FAA considered lower alternative arrival limits. The FAA chose four unscheduled hourly arrivals to lessen the impact on these operations. This limit recognizes historic operational levels, while still achieving the expected decrease in delays.

Conclusion

The FAA intends for this rule to complement the scheduled flight reductions in place at O'Hare under the August Order. The FAA expects to reduce delays and therefore to minimize the economic impact on small entities, as well as other operators at O'Hare. The FAA did not change the operating environment for flights operating under visual flight rules. Many of these operators are expected to be small operators, which will not be affected by this final rule. For those small entities that are flying under instrument flight rules, costs resulting from reservation requirements at O'Hare, or the use of alternative airports will be minor. We expect only a few operators will have to adjust their arrival time. Given the historical unscheduled arrivals at O'Hare, FAA expects most unscheduled arrivals will be able to continue to arrive at O'Hare. Further, the FAA expects that small entities, along with all O'Hare operators, will benefit from reduced congestion and delays resulting from the flight limits on scheduled and unscheduled operations. Given these findings, the FAA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Analysis

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 they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will not have an effect on foreign commerce.

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; such a mandate is deemed to be a "significant regulatory action." 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, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analysed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We

have determined that it is not a "significant energy action" under the executive order because 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.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

■ 2. Special Federal Aviation Regulation No. 105, Operating Limitations for Unscheduled Operations at Chicago's O'Hare International Airport is added to read as follows:

Section 1. *Applicability.* This Special Federal Aviation Regulation (SFAR) No. 105 applies to persons conducting unscheduled arrivals under instrument flight rules (IFR) to Chicago's O'Hare International Airport (O'Hare) during the hours of 7 a.m. through 8:59 p.m., central time, Monday through Friday, and 12 p.m. through 8:59 p.m., central time on Sunday. This SFAR does not apply to helicopter operations, flights conducted under visual flight rules (VFR), or by foreign air carriers, except those flights conducted by Canadian air carriers or operators.

Section 2. *Terms.* For purposes of this SFAR:

"Additional Reservation" is an approved reservation above the operational limit in section 3. Additional Reservations are available for unscheduled arrivals only, and are allocated in accordance with the procedures described in section 7 of this SFAR.

"Airport Reservation Office (ARO)" is an operational unit of the FAA's David J. Hurley Air Traffic Control System Command Center. It is responsible for the administration of reservations for the "other" category of operations, i.e. unscheduled flights at High Density Traffic Airports (14 CFR, part 93, subpart k), unscheduled flights under Special Traffic Management Programs, and the O'Hare Arrival Reservation Program (excluding public charter flights allocated in accordance with section 6).

"Enhanced Computer Voice Reservation System (e-CVRS)" is the system used by the FAA to make arrival and/or departure reservations at designated airports requiring reservations. Reservations are made through a touch-tone telephone interface, an Internet Web interface, or directly through the ARO.

"Public Charter" is defined in 14 CFR 380.2 as a one-way or roundtrip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator.

"Public Charter Operator" is defined in 14 CFR 380.2 as a U.S. or foreign public charter operator.

"Reservation" is an authorization received in compliance with applicable Notices to Airmen (NOTAMs) and procedures established by the FAA Administrator to operate an unscheduled arrival flight to O'Hare during peak hours.

"Unscheduled Arrival" is an arrival other than one regularly conducted and scheduled by an air carrier or other operator between O'Hare and another service point. However, certain types of air carrier operations are also considered as unscheduled for the purposes of this rule, including public, on-demand, and other charter flights; hired aircraft service; ferry flights; and other non-passenger flights.

Section 3. *Operational Limits.* Except as provided for in section 7 below, Unscheduled IFR Arrivals to O'Hare are limited to four Arrival Reservations per hour and no more than two Arrival Reservations during each half-hour, for the peak hours described in section 1.

Section 4. *Reservation Requirement.* Each person conducting an unscheduled IFR flight to O'Hare during the peak hours described in section 1 must obtain, for such flight operation, an Arrival Reservation allocated by the ARO or, in the case of public charters, in accordance with the procedures in section 6. An Arrival Reservation is not an air traffic control clearance. Additionally, it is the separate responsibility of the pilot/operator to comply with all NOTAMs, security or other regulatory requirements to operate at O'Hare.

Section 5. *Reservation Procedures.*

a. The FAA's ARO will receive and process all Reservation requests for Unscheduled Arrivals at O'Hare during the effective period, except for requests for public charter flights. Requests for Reservations for public charter flights are addressed in section 6. Reservations are allocated on a "first-come, first-served" basis determined by the time the request is received at the ARO. Standby lists are not maintained. The computer reservation system may be accessed using a touch-tone telephone, via the Internet, or by telephoning the ARO directly. Requests for Reservations will be accepted beginning 72 hours prior to the proposed time of arrival at O'Hare. For example, a request for an 11 a.m. Reservation on a Thursday will be accepted beginning at 11 a.m. on the previous Monday.

b. A maximum of two transactions per telephone call/Internet session will be accepted.

c. The ARO will allocate Reservations on a 30-minute basis. Reservation periods are half-hourly from the top and bottom of the hour (00 through 29 and 30 through 59) regardless of the arrival time within the period. For example, a 1920 arrival uses a 1900–1929 Reservation.

d. An Arrival Reservation does not ensure against traffic delays, nor does it guarantee arrival within the allocated time period. Aircraft specifically delayed by ATC traffic management initiatives are not required to obtain a new Reservation based on the revised arrival time.

e. Operators must check current NOTAMs in effect for the airport. A reservation from e-CVRS does not constitute permission to operate if additional operational limits or procedures are required by NOTAM and/or regulation.

f. The filing of a request for a Reservation does not constitute the filing of an IFR flight plan as required by regulation. The IFR flight plan must be filed only after the Reservation is obtained, and must be filed in accordance with FAA regulations and procedures. The ARO does not accept or process flight plans.

g. Operators may obtain Reservations by (1) accessing the Internet; (2) calling the ARO's interactive computer system via touch-tone telephone; or (3) calling the ARO directly. The telephone number for the e-CVRS computer is 1–800–875–9694. This toll free number is valid for calls originating within the United States, Canada, and the Caribbean. Operators outside those areas may access e-CVRS by calling the toll number of (703) 707–0568. The Internet Web address for accessing e-CVRS is *http://www.fly.faa.gov/ecvrs.* Operators may contact the ARO at (703) 904–4452 if they have a technical problem making a Reservation using the automated interfaces, if they have a question concerning the procedures, or if they wish to make a telephone Reservation

from outside the United States, Canada, or the Caribbean.

h. When filing a request for an Arrival Reservation at O'Hare, the operator must provide the following information:

(1) Date(s) and hour(s) (UTC) of the proposed arrival(s).

(2) Aircraft call sign, flight identification, or tail/registration number. Operators using a 3-letter identifier and flight number for air traffic control (ATC) communication must obtain a reservation using that same information. Operators communicating with ATC using an aircraft tail number or other flight identification must obtain a reservation using that information.

(3) Aircraft type identifier.

(4) Departure airport (3 or 4-letter identifier) immediately prior to arriving at O'Hare.

Should the requested time not be available, the closest available time before and after the requested time will be offered.

i. Changes must be made to an e-CVRS Reservation using the telephone interface, the Internet web interface, or by calling the ARO before the time of the allocated Arrival Reservation at O'Hare.

j. The operator must cancel the Reservation if it will not be used. Cancellations must be made through e-CVRS as soon as practical using the telephone interface, the Internet web interface, or by calling the ARO in order to release the Arrival Reservation for reallocation.

k. The following information is needed to change or cancel a Reservation:

(1) Aircraft 3-letter identifier and flight number or registration/tail number used to make the original reservation.

(2) Date and Time (UTC) of Reservation.

(3) Reservation number.

Section 6. *Special Procedures for Public Charter Arrivals.*

a. One Arrival Reservation in each hour will be available for allocation to Public Charter operations prior to the adopted 72-hour Reservation window in section 5.

b. The Public Charter Operator may request an Arrival Reservation up to six months from the date of the flight operation. Reservations should be submitted to Federal Aviation Administration, Slot Administration Office, AGC–220, 800 Independence Avenue, SW., Washington, DC 20591. Submissions may be made by facsimile to (202) 267–7277 or by e-mail to *7-AWA-slotadmin@faa.gov.*

c. The Public Charter Operator must certify that its prospectus has been accepted by the Department of Transportation in accordance with 14 CFR part 380.

d. The Public Charter Operator must identify the call sign/flight number or aircraft registration number of the direct air carrier, the date and time of the proposed arrival(s), origin airport immediately prior to O'Hare, and aircraft type. Any changes to an approved Reservation must be approved in advance by the Slot Administration Office.

e. If Arrival Reservations under paragraph (a) above have been allocated and are unavailable, the public charter operator may request Reservations under section 5.

Section. 7. *Additional Reservations.*

a. Notwithstanding the restrictions in section 1, if the Air Traffic Organization determines that ATC weather and capacity conditions are favorable and significant delay is not likely, the FAA may determine that additional Reservations may be accommodated for a specific time period. Generally, the availability of additional Reservations will not be determined more than 8 hours in advance. Unused Arrival Reservations allocated for scheduled operations may also be made available for Unscheduled Arrivals. If available, additional Reservations will be added to e-CVRS and granted on a first-come, first-served basis using the procedures described in section 5 of this SFAR. Reservations for additional arrival operations are not granted by the local ATC facility and must be obtained through e-CVRS or the ARO.

b. An operator who has been unable to obtain a Reservation at the beginning of the 72-hour window may find that a Reservation may be available on the scheduled date of operation due to additional Reservations or cancellations.

c. ATC will accommodate declared emergencies without regard to Reservations. Non-emergency flights in support of national security, law enforcement, military aircraft operations or public-use aircraft operations may be accommodated above the Reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate waiver will be included on the Internet at the e-CVS Web site at *http://www.fly.faa.gov/ecvrs.*

Section 8. *Making Arrival Reservations Using e-CVRS.*

a. Telephone users. When using a touch-tone telephone to make a Reservation, you are prompted for a response. All input is accomplished using the keypad on the telephone. One issue with a touch-tone telephone entry is that most keys have a letter and number associated with them. When the system asks for a date or time, it is expecting an input of numbers. A problem arises when entering a tail number, or 3-letter identifier. The system does not detect if you are entering a letter (alpha character) or a number. Therefore, when entering an aircraft identifier and flight number or aircraft registration/tail number, two keys are used to represent each letter or number. When entering a number, precede the number you wish by the number 0 (zero) i.e., 01, 02, 03, 04, * * * If you wish to enter a letter, first press the key on which the letter appears and then press 1, 2, or 3, depending upon whether the letter you desire is the first, second, or third letter on that key. For example to enter the letter "N," first press the "6" key because "N" is on that key, then press the "2" key because the letter "N" is the second letter on the "6" key. Since there are no keys for the letters "Q" and "Z," e-CVRS pretends they are on the number "1" key. Therefore, to enter the letter "Q," press 11, and to enter the letter "Z," press 12.

Note: *The "N" character must be entered along with an aircraft tail number (see Table 1). Operators using a 3-letter identifier and flight number to communicate with ATC facilities must enter that same information when making a Reservation.*

TABLE 1.—CODES FOR CALL SIGN/TAIL NUMBER INPUT

Codes for Call Sign/Tail Number Input Only			
A–21	J–51	S–73	1–01
B–22	K–52	T–81	2–02
C–23	L–53	U–82	3–03
D–31	M–61	V–83	4–04
E–32	N–62	W–91	5–05
F–33	O–63	X–92	6–06
G–41	P–71	Y–93	7–07
H–42	Q–11	Z–12	8–08
I–43	R–72	0–00	9–09

b. Additional helpful key entries: (See Table 2).

TABLE 2.—HELPFUL KEY ENTRIES

#	After entering a call sign/tail number, depressing the "pound key" (#) twice will indicate the end of the tail number.
*	Will return to the start of the process.
2	
*	Will repeat the call sign/tail number used
3	in a previous reservation.
*	Will repeat the previous question.
5	

TABLE 2.—HELPFUL KEY ENTRIES—Continued

* 8	Tutorial Mode: Each prompt for input includes a more detailed description of what is expected as input. *8 are a toggle on/off switch. Entering *8 in tutorial mode will return you to the normal mode.
* 0	Expert Mode: In the expert mode each prompt for input is brief with little or no explanation. Expert mode is also on/off toggle.

c. Internet Web Based Interface. The e-CVRS reservation system includes a Web-based interface. The Internet option provides a fast, user-friendly environment for making Reservations. The Internet address is *http://www.fly.faa.gov/ecvrs.* Flight information may be added or edited using e-CVRS after the reservation is initially obtained.

All users of e-CVRS must complete a one-time registration form containing the following information: full name; e-mail address; a personal password; password confirmation; and company affiliation (optional). Your e-mail and password are required each time you login to use e-CVRS. Instructions are provided on each page to guide you through the reservation process. If you need help at any time, you can access page-specific help by clicking the question mark "?" located in the upper right corner of the page.

Section 9. *Expiration.* This Special Federal Aviation Regulation terminates on October 28, 2005, unless sooner terminated.

Issued in Washington, DC, on June 30, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–13363 Filed 7–7–05; 8:45 am]

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Federal Register

Friday,
July 8, 2005

Part IV

Environmental Protection Agency

40 CFR Part 799

Final Enforceable Consent Agreement and Testing Consent Orders; Two Formulated Composites of Fluorotelomer-based Polymer Chemicals; Four Formulated Composites of Fluoropolymer Chemicals; Export Notifications; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPT–2004–0001; FRL–7710–4]

Final Enforceable Consent Agreement and Testing Consent Order for Two Formulated Composites of Fluorotelomer-based Polymer Chemicals; Export Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final consent agreement and order.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with AGC Chemicals Americas, Inc.; Clariant GmbH; Daikin America, Inc.; and E.I. du Pont de Nemours and Company (the Companies). The Companies have agreed to perform incineration testing of two formulated composites of fluorotelomer-based polymer (FTBP) chemicals representative of chemicals applied to textile and paper products. This document announces the ECA and the Order that incorporates the ECA for this testing, and summarizes the terms of the ECA. As a result of the ECA and Order that incorporates the ECA, exporters of either of the formulated composites containing FTBP chemicals, including persons who do not sign the ECA, are subject to export notification requirements under section 12(b) of TSCA. This document adds the two formulated composites of FTBP chemicals to the table of testing consent orders for substances and mixtures without Chemical Abstract Service (CAS) Registry Numbers. Data developed from the ECA testing will contribute to the Agency's efforts to determine whether municipal and/or medical waste incineration of FTBPs is a potential source and/or pathway of environmental and human exposure to perfluorooctanoic acid (PFOA). The data will also contribute to the Agency's continuing efforts to achieve healthy communities and ecosystems.

DATES: The effective date of the ECA, the Order that incorporates the ECA, and this action is July 8, 2005.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number OPPT–2004–0001. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will not be placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M); telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For information on the ECA, contact: Richard W. Leukroth, Jr., Chemical Control Division (7405M); telephone number: (202) 564–8167; fax number: (202) 564–4765; e-mail address: *leukroth.rich@epa.gov*.

For technical information on testing and availability of ECA test data, contact: John Blouin, Economics, Exposure and Technology Division (7406M); telephone number: (202) 564–8519; fax number: (202) 564–8528; e-mail address: *blouin.john@epa.gov*.

For technical information on export notification, contact: Richard W. Leukroth, Jr., Chemical Control Division (7405M); telephone number: (202) 564–8167; fax number: (202) 564–4765; e-mail address: *leukroth.rich@epa.gov* or Laura L. Bunte, Chemical Control Division (7405M); telephone number: (202) 564–8087; fax number: (202) 564–4765; e-mail address: *bunte.laura@epa.gov*.

To contact any of these individuals by mail, identify the individual by name and Division indicated for that person, and use this address: Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. The requirements in the ECA and the Order that incorporates the ECA only apply to those companies that are specifically named in the ECA. As of July 8, 2005, any person who exports or intends to export either of the two formulated composites of FTBP chemicals that are the subject of the ECA and the Order that incorporates the ECA are subject to the export notification requirements of TSCA section 12(b) (see 40 CFR part 707, subpart D, and Unit IV.B.). Although other types of entities could also be affected, most chemical manufacturers are usually identified under North American Industrial Classification System (NAICS) code 325. If you have any questions regarding the applicability of this action to a particular entity, contact persons 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 799 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. Information on TSCA 12(b) export notification (40 CFR part 707) is available at *http://www.epa.gov/oppt/chemtest/sect12b.htm*.

II. Background

A. What are FTBP Chemicals?

FTBP chemicals are polymers manufactured from a fluorinated chemical intermediate via a telomerization process. Telomerization is the reaction of a telogen (such as pentafluoroethyl iodide) with a polymerizable compound (such as tetrafluoroethylene) to form a low molecular weight polymer with few repeating units, known as "telomers."

FTBPs are the major chemical constituents of telomer-based polymeric products (TBPPs), which are used in many industrial and consumer products. TBPPs are applied as soil, stain, and water resistant coatings to textiles, carpet, leather, stone and tile products; as grease, oil and water resistant coatings on paper products; and, as surfactants and intermediates.

B. Why Does EPA Need Environmental Effects Data on FTBP Chemicals?

EPA has identified potential human health concerns from exposure to PFOA and its salts. The Agency is concerned that fluorinated telomers used to

manufacture FTBPs may be a source and/or pathway to environmental and human exposure to PFOA because FTBP chemicals may metabolize or degrade to PFOA by mechanisms that are not fully understood at this time. EPA believes that the nine individual FTBPs (see Unit III.B.) with their associated chemistries, particularly the bond strength of the common C-F bonds, are representative of the manner in which FTBPs will degrade, potentially forming PFOA when incinerated under the conditions simulated by this ECA testing program. The F-(CF2)x- and -(CF2-CF2)x- moieties are common to the individual FTBPs, and the two formulated composites of FTBP chemicals that are the subject of the ECA and the Order that incorporates the ECA are representative of the individual fluorotelomer components and the remaining non-component FTBPs, for all FTBPs used in commerce.

In September 2002, EPA's OPPT initiated a priority review of PFOA because developmental toxicity, carcinogenicity, and blood-monitoring data presented in an interim revised hazard assessment raised the possibility that PFOA might present a significant risk to human health (Ref. 1). On January 4, 2005, OPPT's Risk Assessment Division submitted a draft risk assessment of the potential human health effects associated with exposure to PFOA and its salts to EPA's Science Advisory Board's (SAB) Perfluorooctanoic Acid Risk Assessment Review Panel for peer review (Refs. 2 and 3). These assessments revealed uncertainties associated with the sources and pathways of human exposure. EPA believes that the information to be developed under the ECA testing will better inform the Agency regarding the potential source(s) and/or pathway(s) of environmental and human exposure to PFOA.

III. ECA Development and Conclusion

A. How is EPA Going to Obtain Environmental Testing on FTBP Chemicals?

In the **Federal Register** of April 16, 2003 (68 FR 18626) (FRL–7303–8), EPA initiated a public process to negotiate ECAs concerning PFOA and fluorinated telomers. The two goals of the ECAs resulting from these public discussions are to develop environmental fate and transport data, as well as other data relevant to identifying the pathway(s) that result in human exposure to PFOA by air, water, or soil; and, to characterize how PFOA gets into those pathways, including the products or processes that are responsible for the presence of PFOA in the environment. EPA anticipates that the data to be developed under such ECAs will be supplemental to data being generated by ongoing testing efforts described under industry letters of intent (LOIs) (Refs. 4–7).

In preparation for the initial public meeting on June 6, 2003, EPA developed a preliminary framework document (Ref. 8) outlining Agency data needs that address the outstanding PFOA source and exposure pathway questions identified in the **Federal Register** notice of April 16, 2003. EPA's preliminary framework document was intended to serve as a discussion guide for the June 6, 2003, public meeting and to aid in distinguishing between outstanding EPA data needs and industry LOI commitments. The preliminary framework document was not a predetermined list of information needs defining the outcome of the ECA process.

The ECA described in this document provides for a laboratory-scale incineration testing program for two formulated composites of FTBP chemicals. Incineration testing of FTBPs is one of the data needs identified in EPA's preliminary framework document for PFOA. On June 6, 2003, the PFOA Plenary Group (consisting of EPA and all parties who had identified themselves as being interested in the ECA development proceedings after publication of the April 16, 2003 **Federal Register** notice) acknowledged that such a testing program was an opportunity for ECA development. The PFOA Plenary Group tasked the Telomer Technical Workgroup (a subgroup of the PFOA Plenary Group) with working out the details that could be incorporated into an ECA between the Companies and EPA.

On July 9, 2003, the Telomer Technical Workgroup received proposals from the Companies and EPA (Refs. 9 and 10) for incineration testing of FTBPs. Details of the testing program were then developed by members of the Telomer Incineration Subgroup (a subgroup of the Telomer Technical Workgroup) and the subgroup and workgroup reached consensus on the testing to be required under the ECA. On March 30, 2004, the Telomer Technical Workgroup acknowledged that this testing program had sufficient merit for consideration by the PFOA Plenary Group (Ref. 11). On April 1, 2004, the PFOA Plenary Group discussed the merit of this testing program and recommended that EPA consider entering into an ECA with the Companies (Ref. 12). EPA agreed and initiated steps to enter into this ECA with the Companies. On February 8, 2005, EPA received the ECA signed by the Companies, and on June 28, 2005, EPA signed the ECA and the Order that incorporates the ECA. The effective date of the ECA and the Order that incorporates the ECA is July 8, 2005.

EPA uses ECAs to accomplish testing of chemicals for health and environmental effects where a consensus exists concerning the need for and scope of testing (40 CFR 790.1(c)). The procedures for ECA negotiations and the factors for determining whether a consensus exists are described at 40 CFR 790.22 and 790.24, respectively.

B. What is the Subject of the ECA and Order Incorporating the ECA?

As specified under the ECA, two formulated composites of FTBP chemicals are the subject of and will be tested under the ECA and the Order that incorporates the ECA. Appendix A and Part XXIV. (individual company signature pages) of the ECA provide details on: The rationale for formulating two composites that represent TBPP chemicals specifically applied to textile and/or paper products, the identity of the FTBP chemicals used to formulate each composite, the procedures for formulating each composite, and the procedures by which each company will contribute the FTBP chemical(s) for which it is obligated under the terms of the ECA. The paper composite will contain three FTBP chemicals as specified in Appendix A and Part XXIV. of the ECA. The textile composite will contain six FTBP chemicals as specified in Appendix A and Part XXIV. of the ECA. The nine FTBP chemicals to be formulated into the paper and textile composites that are subject to the ECA and the Order that incorporates the ECA are identified as: Perfluoroalkylethyl acrylate copolymer, EPA-designated accession number (ACC) 171790; perfluoroalkyl acrylate copolymer, ACC 158022; perfluoroalkyl methacrylate polymer, document control number (DCN) 63040000037A; substituted methacrylate, propenoic acid, perfluoroalkyl esters, DCN 63040000033B; perfluoroalkyl acrylic polymer, DCN 63040000037C; poly-.beta.-fluoroalkylethyl acrylate and alkyl acrylate, ACC 174993; poly(.beta.-fluoroalkylethyl acrylate and alkyl acrylate), ACC 70430; polysubstituted acrylic copolymer, ACC 157381; and perfluoroalkyl acrylate copolymer latex, ACC 70907. EPA cannot publicly identify the content of the paper and textile composites with any greater degree of specificity, given the need to protect the Companies' CBI.

EPA uses a variety of numerical identification systems for tracking chemicals. These include CAS numbers assigned to non-confidential chemicals, premanufacture notice (PMN) numbers assigned by EPA when chemicals enter EPA's new chemical review process, document control numbers (DCN) assigned by the EPA OPPT's Confidential Business Information Center for EPA tracking, and Accession (ACC) numbers provided by EPA when a chemical identity listed on the TSCA Inventory has been claimed as TSCA CBI. In addition, chemicals that qualify for a reporting exemption under the Polymer Exemption Rule (40 CFR 723.250) may have a commercial trade identity or an IES Method I (CAS Inventory Expert Service) name assigned.

C. What Testing Does the ECA for FTBP Chemicals Require?

The ECA for laboratory-scale incineration testing of two composites of FTBP chemicals requires environmental testing, as described in Table 1 of this unit, which sets forth the required testing, test standards, and reporting requirements for testing to be conducted under the ECA.

The testing included in the ECA will be conducted in two segments, as follows: Phase I—PFOA Transport Testing (Phase I) and Phase II—Fluorotelomer Incineration Testing (Phase II). Phase I will consist of quantitative transport efficiency testing for PFOA. At the conclusion of Phase I, the Companies will provide EPA with a letter report summarizing the results. In the event that the transport efficiency of PFOA or total fluorine is equal to or greater than 70%, testing will proceed to Phase II. In the event that the transport efficiency of PFOA and total fluorine are both individually less than 70%, the Companies will initiate a technical consultation with EPA to reach agreement on how to proceed. The various outcomes of such a technical consultation are laid out in Part VIII. of the ECA.

Under Phase II, elemental analysis, combustion stoichiometry, thermogravimetric analysis, laboratory-scale combustion testing, and, if required under the ECA (see Table 1, footnote 9 of this unit), release assessment reporting will be performed for the two composites of FTBP chemicals that are the subject of the ECA.

TABLE 1.—REQUIRED TESTING, TEST STANDARDS, REPORTING REQUIREMENTS: PHASES OF THE TESTING PROGRAM FOR THE INCINERATION OF FTBP COMPOSITES

Phase I		
PFOA Transport Testing	Testing Standard/Reporting requirements	Deadline [1] (Days)
Phase I Study Plan(s)	40 CFR 790.62(b) as annotated by Part X. of the ECA	60 [3]
Phase I Quality Assurance Project Plan(s)	EPA Requirements for Quality Assurance Project Plans (QA/R5) [10]	90 [3]
Quantitative PFOA transport testing [2]	Appendix C.1. of the ECA	240 [4,5]
Phase II		
Fluorotelomer Incineration Testing	Test Standard/Reporting requirements	Deadline [1] (Days)
Phase II Study Plan(s)	40 CFR 790.62(b) as annotated by Part X. of the ECA	60 [3]
Phase II Quality Assurance Project Plan(s)	EPA Requirements for Quality Assurance Project Plans (QA/R5) [10]	180 [3]
Receipt of composite components by designated facility(ies)	Part XXIV. and Appendix A.3. of the ECA	90 [7]
Elemental Analysis [6]	Appendix C.2.1. of the ECA	720 [8]
Combustion Stoichiometry [6]	Appendix C.2.2. of the ECA	720 [8]
Thermogravimetric Analysis [6]	ASTM E1868–02, as modified in Appendix B.1. of the ECA	720 [8]
Laboratory-scale Combustion Testing [6]	Appendices C.2.4. and C.2.5., as annotated/supplemented by Appendices D.1., D.2., D.3., and D.4. of the ECA	720 [8]
Release Assessment Report	Appendix E.2. of the ECA	720 [9]

[1] Number of days, starting with the day following the event starting the time period in question. Interim progress reports must be submitted by the Companies to EPA every 180 days beginning 180 days from July 8, 2005, until the end of the ECA testing program (see Part XIV. and Appendix E.1. of the ECA).

[2] At the conclusion of Phase I, and prior to initiation of Phase II, the Companies will provide a letter report to EPA summarizing the results of Phase I testing (see Part VII.A. of the ECA). In the event that the transport efficiency of PFOA or of total fluorine (as determined by the formulas in Appendix C.1. of the ECA) is greater than or equal to 70%, then the Companies will proceed to Phase II. In the event that the transport efficiency of PFOA and of total fluorine (as determined by the formulas in Appendix C.1. of the ECA) are both individually less than 70% then the Companies will initiate a Technical Consultation with EPA. The outcomes of the Technical Consultation are described in Part VIII. of the ECA.

[3] Number of days after July 8, 2005, when submission is due.

[4] Number of days after EPA approval of the Study Plan(s) and QAPP(s) for Phase I testing when a letter report describing transport efficiency test result(s) and any contingency testing performed is due to EPA (see Part VII.A. and Appendix C.1.3. of the ECA). If the Study Plan(s) and QAPP(s) are not approved by EPA within 60 days of submission of the Phase I QAPP(s), then this deadline is extended by 180 days to accommodate re-scheduling with the thermal reactor system laboratory.

[5] The final report for Phase I will be submitted to EPA within 60 days of the completion of the Technical Consultation if the consultation does not result in an agreement to conduct further testing. If the Technical Consultation results in an agreement to conduct further testing, the final report for Phase I will be included in the final report for such further testing, unless agreed otherwise in the Technical Consultation (see Part VIII. of the ECA).

[6] The results of this testing will be provided in the final report for Phase II (see Appendix C.2.5. and Appendix E.3. of the ECA).

[7] Number of days from the submission of the Phase I letter report signifying that Phase II can proceed and the approval by EPA of the Phase II QAPP(s) that the Companies must meet their individual obligations to provide the designated facility(ies) with the components for each composite to be tested under the ECA (see Part III.B. of the ECA). If Phase II is required by Technical Consultation agreement (see footnote 2 of this table), the deadline shall be as agreed in the Technical Consultation.

[8] Number of days from the submission of a Phase I letter report signifying that Phase II testing can proceed, and the approval of Study Plan(s) and QAPP(s) for the Phase II testing when the report is due, if all components of each composite are received, or EPA determines that testing shall proceed with a partial composite(s) (see Part III.B. of this ECA). If the study plan(s) and QAPP(s) are not approved within 60 days of submission of the Phase II QAPP(s), then this deadline is extended by 180 days to accommodate re-scheduling with the thermal reactor system laboratory. If Phase II testing is required by Technical Consultation agreement (see footnote 2 of this table), the deadline shall be as agreed in the Technical Consultation.

[9] In the event that Phase II laboratory-scale incineration testing identifies measurable levels of PFOA resulting from the incineration testing for any or all of the fluorotelomer composites tested under this ECA, as defined in Appendix C.2.5.5. of the ECA, the Companies will prepare a Release Assessment Report to place in perspective the relevance of such measurable levels in the laboratory-scale incineration testing results with respect to full-scale municipal and/or medical waste incinerator operations in the United States. If required, the Release Assessment Report will be submitted in conjunction with the Final Report for Phase II testing (see footnotes 6 and 8 of this table).

[10] Guidance for developing Quality Assurance Project Plans can be found in the EPA document EPA QA/R-5: *EPA Requirements for Quality Assurance Project Plans*, prepared by: Office of Environmental Information, EPA, March 2001. This is also available from the EPA website at *http://epa.gov/quality/qs-docs.*

D. What are the Uses for the Test Data to be Developed Under the ECA?

EPA will use the data obtained from the testing to be conducted under the ECA to assess the potential for waste incineration of FTBPs to emit PFOA. This analysis will be based on quantitative determination of potential exhaust-gas levels of PFOA that may emanate from laboratory-scale combustion testing under conditions representative of typical municipal and/or medical waste combustor operations in the United States. The data could provide EPA with an understanding of whether the incineration of FTBPs is a source and/or pathway for environmental and human exposure to PFOA.

These data could also be used to inform screening level human and environmental exposure assessments. In addition, the data could be used by other Federal Agencies (e.g., the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission (CPSC), and the Food and Drug Administration (FDA)) in assessing chemical risks and in taking appropriate actions within their programs.

IV. Other Impacts of the ECA

A. What if EPA Should Require Additional Environmental Testing on FTBP Chemicals?

If EPA decides in the future that it requires additional data on FTBPs, the Agency would initiate a separate action.

B. How Does the Order Affect TSCA Export Notification?

As of the effective date of the ECA and the Order that incorporates the ECA under TSCA section 4 (i.e., the date of publication of this document in the **Federal Register**) any of the Companies, as well as any other person, who exports or intends to export either of the two formulated composites of FTBP chemicals that are the subject of this ECA and Order that incorporates the ECA, in any form, are subject to the export notification requirements of TSCA section 12(b). Procedures related to export notification are described in 40 CFR part 707, subpart D. EPA maintains lists of all chemical substances and mixtures with CAS numbers (40 CFR 799.5000) and without CAS numbers (40 CFR 799.5025) that are subject to testing consent orders. This document will add the two formulated composites of FTBP chemicals that are the subject of this ECA and Order that incorporates the ECA to the list at 40 CFR 799.5025.

Notice and comment rulemaking is not needed to add these chemical substances to the list at 40 CFR 799.5025 because the export notification requirements are imposed by statute. Section 12(b) of TSCA requires any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 to submit a notification of the export or intended export to EPA. An ECA is an action under TSCA section 4 requiring the submission of data. 40 CFR 790.1. Accordingly, EPA's ECA regulations require that each ECA contain a statement that manufacturers or processors signing the ECA, as well as any other person, shall comply with export notification requirements in TSCA section 12(b). 40 CFR 790.60(a)(11). The two formulated composites of FTBP chemicals identified in this document are subject to an Order incorporating an ECA. EPA finds that notice and an opportunity for comment is unnecessary to implement the export notification requirements in TSCA section 12(b) for the reasons stated in this unit.

For chemical substances and mixtures subject to other Orders incorporating ECAs that were issued in the past, EPA initiated separate rulemakings to amend the lists at 40 CFR 799.5000 and 40 CFR 799.5025, thereby affording the public a comment opportunity as well as notifying the public of the existence of an ECA. EPA took this step to ensure that those companies not a party to the ECA or Order noticed their need to comply with TSCA section 12(b). However, EPA now believes that a separate rulemaking or an opportunity to comment on the implementation of the statutory mandate is not necessary.

C. What are the Economic Impacts of the ECA?

Based on the economic analysis conducted for the ECA, the Agency expects the cost of the testing to be performed under this ECA to range from $100,000 to $150,000. This estimate is based on a contact report of an inquiry directed to a university laboratory conducting thermal "burn" test research. The estimated total cost for industry to conduct the required testing under the ECA is $150,000, which is the upper end of the estimated cost range. EPA anticipates that the costs for testing under this ECA will have a low potential for adverse economic impact on the regulated community because the costs for testing will be shared across four companies who are signatories to the ECA and the Order that incorporates the ECA.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification for a first-time submitter of any TSCA section 12(b) notification was $62.60 (Ref. 13). When inflated from 1992 to 2004 dollars (4thQ) by a factor of 1.538 using the

Employment Cost Index for White Collar Occupations (Ref. 14), the current cost is estimated to be $96.12, or a burden of 1.5 hours, for a first-time submitter. An exporter who had previously submitted a 12(b) notification for any chemical/country combination would incur an estimated cost of $31.72 for preparing and submitting a TSCA section 12(b) notification, based on the burden estimate of .5 hours.

V. References

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2. EPA. Draft Risk Assessment of the Potential Human Health Effects Associated with the Exposure to Perfluorooctanoic Acid and its Salts. January 4, 2005. pp. 117. Available from EPA website, *http://www.epa.gov/oppt/pfoa/*.

3. EPA. Science Advisory Board (SAB) Staff Office. Notification of Upcoming Meetings of the Science Advisory Board Perfluorooctanoic Acid Risk Assessment (PFOA) Review Panel. **Federal Register** (70 FR 2157–2158, January 12, 2005) (FRL–7860–5).

4. 3M Company, Dr. Larry Wending. Letter of Intent to Stephen L. Johnson, EPA, to continue ongoing environmental, health, and safety measures by Company relating to Perfluorooctanoic Acid and its Salts (PFOA). March 13, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0007.

5. The Society of the Plastics Industry, Inc., Donald K. Duncan. The Ammonium Perfluorooctanoate (APFO) Users. Letters of Intent to Stephen L. Johnson, EPA, regarding responsive Voluntary Actions by parties to evaluate and control emissions of Ammonium Perfluorooctanoate (APFO). March 14, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0012.

6. Telomer Research Program (TRP) Member Companies. Letter of Intent to Stephen L. Johnson, EPA, regarding addressing concerns raised by EPA about the possible association of Perfluoroctanoic Acid (PFOA) with telomer-based products. March 14, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0013.

7. APFO Users, Telomer Companies, and The 3M Company. Letter of Intent to Stephen L. Johnson, EPA, regarding commitment by Companies to assist the Environmental Protection Agency (EPA) in its investigation of Perfluorooctanoic Acid (PFOA) and Ammonium Perfluorooctanoate (APFO). March 31, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0016.

8. EPA. Preliminary Framework for Enforceable Consent Agreement (ECA) Data Development for PFOA and Telomers. May 20, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0056.

9. Telomer Research Program. Incineration Research Approach. Presentation to the Telomer Technical Workgroup. July 10, 2003. p. 3. Available from EPA EDOCKET as OPPT–2003–0012–0147.

10. EPA. EPA ECA Proposal for Telomer Incineration Testing. Presentation to the Telomer Technical Workgroup. July 10, 2003. p. 2. Available from EPA EDOCKET as OPPT–2003–0012–0147.

11. EPA. PFOA ECA Telomer Technical Workgroup Meeting Summary. March 30, 2004. p. 8. Available from EPA EDOCKET as OPPT–2003–0012–0611.

12. EPA. Enforceable Consent Agreement Development for Perfluorooctanoic Acid (PFOA) and Fluorinated Telomers. Public Meeting Summary. April 1, 2004. p.6. Available from EPA EDOCKET as OPPT–2003–0012–0613.

13. EPA. *Economic Analysis in Support of the Final Rule Promulgated under TSCA Section 12(b).* William Silagi. EPA/OPPT/RIB. Washington, DC. June 1992.

14. Bureau of Labor Statistics (BLS). 2003. Employment Cost Index, Total Compensation: White-Collar Occupations (Series ID: ECS11102I). *http://data.bls.gov/cgi-bin/srgate.* Extracted February 9, 2005.

15. EPA. Wendy Hoffman. Memorandum to Richard Leukroth regarding calculation of Paperwork Reduction Act burden estimate for the incineration ECAs. October 20, 2004. Available from EPA EDOCKET as OPPT–2004–0001–0007.

16. EPA. Lynne Blake-Hedges. Memorandum to EPAB Staff on Unit Burden Estimates for 12(b) Export Notification for Section 4 Test Rules and Enforceable Consent Agreements (ECAs). July 20, 1999.

17. ASTM. Standard Test Method for Loss-On Drying by Thermogravimetry. *2002 Annual Book of ASTM Standards.* Volume 14.02, Designated E 1868–02. pp. 635–638. August 10, 2002.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

This action announces an Order that incorporates an ECA between EPA and the Companies. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "regulatory action" subject to review by the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for the EPA's regulations in title 40 of the CFR are listed in 40 CFR part 9.

The information collection requirements related to the Order that incorporates the ECA have already been approved by OMB pursuant to the PRA under OMB control number 2070–0033 (EPA ICR No. 1139). The one-time public burden for this collection of information is estimated to be approximately 216.5 hours per response (i.e., per company), or 866 hours total burden for the four companies (Ref. 15). Under the PRA, "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. For this collection, it includes the time needed to review instructions; complete and review the collection of information; and transmit or otherwise disclose the information.

The information collection requirements related to export notification requirements under section 12(b) of TSCA, including those related to the ECA and the Order that incorporates the ECA, have already been approved by OMB pursuant to PRA under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for this information collection is estimated to be between .5 hours to 1.5 hours per response. The lower estimate applies to companies that have previously submitted a TSCA section 12(b) notification for any chemical or mixture, and therefore need only update an existing form letter assumed to have been generated electronically. The higher estimate applies to companies that are first-time submitters of a TSCA section 12(b) notification (Ref. 16), and therefore need to write an initial letter.

C. Regulatory Flexibility Act

Since the issuance of the ECA and the Order that incorporates the ECA, as well as the applicability of the export notification requirements of TSCA section 12(b) to chemicals addressed in the ECA and the Order that incorporates the ECA, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

D. Unfunded Mandates Reform Act

This action does not 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. Therefore, this action is not subject to the requirements of UMRA.

E. Executive Order 13132 and 13175

This action is not expected to impact State or Tribal governments because these governments are not expected to export the chemicals covered by the ECA or the Order that incorporates the ECA. As such, 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) nor will this action have Tribal implications because it does not significantly or uniquely affect the communities of Indian Tribal governments, or involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply.

F. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 1985, April 23, 1997), does not apply to this action because this action is not designated as an "economically significant" regulatory action as defined by Executive Order 12866 (see Unit VI.A.), nor does this action establish an environmental standard that is intended to have a disproportionate effect on children. To the contrary, this action will provide data and information that EPA and others can use to assess the risks of these chemicals, including potential risks to sensitive subpopulations.

G. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

H. National Technology Transfer 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 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.

The testing conducted under the ECA involves technical standards. The Agency conducted a search to identify potentially applicable voluntary consensus standards. No such standard was identified for incineration testing of FTBP chemicals that are the subject of the ECA. However, EPA identified a voluntary consensus standard for thermogravimetric analysis (Ref. 17) which is a required element of the Phase II ECA testing. Appendix B.1 of the ECA describes specific modifications to this voluntary consensus standard that are needed to take into consideration the unique properties of FTBP chemicals.

Guideline No. (Year)	Guideline name	TSCA Guideline No.	OECD Guideline No.
ASTM E 1868–02 (August 10, 2002)	Standard Test Method for Loss-On-Drying by Thermogravimetry	None	None

I. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: June 28, 2005.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR Chapter I is amended as follows:

PART 799—[AMENDED]

■ 1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 2. Section 799.5025 is amended by revising the heading of the first column of the table as set forth below and by adding the following entry to the table in alphabetical order, to read as follows:

§ 799.5025 Testing consent orders for mixtures without Chemical Abstracts Service Registry Numbers.

* * * * *

Mixture/substance	Required test	FR citation
* * * * *	* *	
Fluorotelomer-based composite substance:		
(1) For Paper containing three of the following chemical substances as specified in the ECA:		
(i) Perfluoroalkylethyl acrylate copolymer, EPA-designated accession number (ACC) 171790	Environmental effects.	July 8, 2005.
(ii) Perfluoroalkyl acrylate copolymer, ACC 158022	.....do	Do.

Mixture/substance	Required test	FR citation
(iii) Perfluoroalkyl methacrylate polymer, EPA document control number (DCN) 63040000037A	.....do	Do.
(iv) Substituted methacrylate, propenoic acid, perfluoroalkyl esters, DCN 63040000033B	.....do	Do.
(v) Perfluoroalkyl acrylic polymer, DCN 63040000037C	.....do	Do.
(vi) Poly-.beta.-fluoroalkylethyl acrylate and alkyl acrylate, ACC 174993	.....do	Do.
(vii) Poly(.beta.-fluoroalkylethyl acrylate and alkyl acrylate), ACC 70430	.....do	Do.
(viii) Polysubstituted acrylic copolymer, ACC 157381	.....do	Do.
(ix) Perfluoroalkyl acrylate copolymer latex, ACC No. 70907	.....do	Do.
(2) For Textile containing six of the following chemical substances as specified in the ECA:		
(i) Perfluoroalkylethyl acrylate copolymer, EPA-designated accession number (ACC) 171790	.....do	Do.
(ii) Perfluoroalkyl acrylate copolymer, ACC 158022	.....do	Do.
(iii) Perfluoroalkyl methacrylate polymer, EPA document control number (DCN) 63040000037A	.....do	Do.
(iv) Substituted methacrylate, propenoic acid, perfluoroalkyl esters, DCN 63040000033B	.....do	Do.
(v) Perfluoroalkyl acrylic polymer, DCN 63040000037C	.....do	Do.
(vi) Poly-.beta.-fluoroalkylethyl acrylate and alkyl acrylate, ACC 174993	.....do	Do.
(vii) Poly(.beta.-fluoroalkylethyl acrylate and alkyl acrylate), ACC 70430	.....do	Do.
(viii) Polysubstituted acrylic copolymer, ACC 157381	.....do	Do.
(ix) Perfluoroalkyl acrylate copolymer latex, ACC 70907	.....do	Do.

[FR Doc. 05–13492 Filed 7–7–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPT–2003–0071; FRL–7710–5]

Final Enforceable Consent Agreement and Testing Consent Order for Four Formulated Composites of Fluoropolymer Chemicals; Export Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final consent agreement and order.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with AGC Chemicals Americas, Inc.; Daikin America, Inc.; Dyneon, LLC; and E.I. du Pont de Nemours and Company (the Companies). The Companies have agreed to perform incineration testing of four formulated composites of fluoropolymer (FP) chemicals representative of products currently available in the marketplace. This document announces the ECA and the Order that incorporates the ECA for this testing, and summarizes the terms of the ECA. As a result of the ECA and Order that incorporates the ECA, exporters of any of the formulated composites containing FP chemicals, including persons who do not sign the ECA, are subject to export notification requirements under section 12(b) of TSCA. This document adds the four formulated composites of FP chemicals to the table of testing consent orders for substances and mixtures without Chemical Abstract Service (CAS) Registry Numbers. Data developed from the ECA testing will contribute to the Agency's efforts to determine whether municipal and/or medical waste incineration of FPs is a potential source and/or pathway of environmental and human exposure to perfluorooctanoic acid (PFOA). The data will also contribute to the Agency's continuing efforts to achieve healthy communities and ecosystems.

DATES: The effective date of the ECA, the Order that incorporates the ECA, and this action is July 8, 2005.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number OPPT–2003–0071. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will not be placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M); telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For information on the ECA, contact: Richard W. Leukroth, Jr., Chemical Control Division (7405M); telephone number: (202) 564–8167; fax number: (202) 564–4765; e-mail address: *leukroth.rich@epa.gov*.

For technical information on testing and availability of ECA test data, contact: John Blouin, Economics, Exposure and Technology Division (7406M); telephone number: (202) 564–8519; fax number: (202) 564–8528; e-mail address: *blouin.john@epa.gov*.

For technical information on export notification, contact: Richard W. Leukroth, Jr., Chemical Control Division (7405M); telephone number: (202) 564–8167; fax number: (202) 564–4765; e-mail address: *leukroth.rich@epa.gov* or Laura L. Bunte, Chemical Control Division (7405M); telephone number: (202) 564–8087; fax number: (202) 564–4765; e-mail address: *bunte.laura@epa.gov*.

To contact any of these individuals by mail, identify the individual by name and Division indicated for that person, and use this address: Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. The requirements in the ECA and the Order that incorporates the ECA only apply to those companies that are specifically named in the ECA. As of July 8, 2005, any person who exports or intends to export any of the four formulated composites of FP chemicals that are the subject of the ECA and the Order that incorporates the ECA are subject to the export notification requirements of TSCA section 12(b) (see 40 CFR part 707, subpart D, and Unit IV.B.). Although other types of entities could also be affected, most chemical manufacturers are usually identified under North American Industrial Classification System (NAICS) code 325. If you have any questions regarding the applicability of this action to a particular entity, contact persons 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 799 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. Information on TSCA 12(b) export notification (40 CFR part 707) is available at *http://www.epa.gov/oppt/chemtest/sect12b.htm*.

II. Background

A. What are FP Chemicals?

FP chemicals are polymers mainly consisting of carbon and fluorine atoms, such as polytetrafluoroethylene (PTFE). Many, but not all, commercial fluoropolymers are chemicals made using ammonium perfluorooctanoate (APFO). The fluoropolymer structure is predominantly -(CF2)x- which is a potential source of PFOA. For all fluoropolymer products used in commerce, the -(CF2)- moiety is common to all polymers. The four formulated FP composites that are subject to testing under the ECA are representative of all known commercial FP chemicals and the basic chemistries are represented by the four composite test substances that are subject to testing under this ECA (i.e., dry melt fluoropolymer resin, dry nonmelt PTFE homopolymer resin/gum, dry non-melt fluoroelastomer resin/gum, aqueous fluoropolymer dispersions).

FPs possess a set of special properties that make them highly useful in the products in which they are applied. They are highly resistant to extreme temperatures, chemicals, and weather. FPs have a low friction coefficient, and the lowest dielectric constant of all plastics. They are also flame retardant, and are highly non-stick. FPs are used in a wide variety of industries, and their applications encompass a wide variety of industrial and consumer products. Among the major industrial sectors that use FPs are the automotive, chemical processing, electronics/ semiconductor, aerospace/military, medical/ pharmaceutical, building/construction, and commercial food preparation sectors. Some of the specific applications of FPs in those sectors include wire and cable insulation, O-rings and shaft seals, hoses and tubing, heat resistant/low friction metal coatings, non-stick cookware, thread sealant tape, breathable membranes for apparel, weather-resistant architectural fabric coatings, and personal care products.

B. Why Does EPA Need Environmental Effects Data on FP Chemicals?

EPA has identified potential human health concerns from exposure to PFOA and its salts. The Agency is concerned that residual APFO used to manufacture FPs is a source and/or pathway to environmental and human exposure to PFOA. In addition, there is insufficient data to determine whether FPs could degrade to PFOA by mechanisms that are not fully understood at this time. The high temperatures and retention times used during incineration processes, while destroying most of the polymer molecule, may not completely degrade these polymers. Since the strong C-F bonds are common to all FPs, EPA believes that the 17 individual FPs (see Unit III.B.) with their associated chemistries are representative of the manner in which FPs could degrade, potentially forming PFOA when incinerated under the conditions simulating current municipal and medical waste incinerators as specified by this ECA testing program.

In September 2002, EPA's OPPT initiated a priority review of PFOA because developmental toxicity, carcinogenicity, and blood-monitoring data presented in an interim revised hazard assessment raised the possibility that PFOA might present a significant risk to human health (Ref. 1). On January 4, 2005, OPPT's Risk Assessment Division submitted a draft risk assessment of the potential human health effects associated with exposure to PFOA and its salts to EPA's Science Advisory Board's (SAB) Perfluorooctanoic Acid Risk Assessment Review Panel for peer review (Refs. 2 and 3). These assessments revealed uncertainties associated with the sources and pathways of human exposure. EPA believes that the information to be developed under the ECA testing will better inform the Agency regarding the potential source(s) and/or pathway(s) of environmental and human exposure to PFOA.

III. ECA Development and Conclusion

A. How is EPA Going to Obtain Environmental Testing on FP Chemicals?

In the **Federal Register** of April 16, 2003 (68 FR 18626) (FRL–7303–8), EPA initiated a public process to negotiate ECAs concerning PFOA and fluorpolymers. The two goals of the ECAs resulting from these public discussions are to develop environmental fate and transport data, as well as other data relevant to identifying the pathway(s) that result in human exposure to PFOA by air, water, or soil; and, to characterize how PFOA gets into those pathways, including the products or processes that are responsible for the presence of PFOA in the environment. EPA anticipates that the data to be developed under such ECAs will be supplemental to data being generated by ongoing testing efforts described under industry letters of intent (LOIs) (Refs. 4–7).

In preparation for the initial public meeting on June 6, 2003, EPA developed a preliminary framework document (Ref. 8) outlining Agency data needs that address the outstanding PFOA source and exposure pathway questions identified in the **Federal Register** notice of April 16, 2003. EPA's preliminary framework document was intended to serve as a discussion guide for the June 6, 2003, public meeting and to aid in distinguishing between outstanding EPA data needs and industry LOI commitments. The preliminary framework document was not a predetermined list of information needs defining the outcome of the ECA process.

The ECA described in this document provides for a laboratory-scale incineration testing program for four formulated composites of FP chemicals. Incineration testing of FPs is one of the data needs identified in EPA's preliminary framework document for

PFOA. On June 6, 2003, the PFOA Plenary Group (consisting of EPA and all parties who had identified themselves as being interested in the ECA development proceedings after publication of the April 16, 2003 **Federal Register** notice) acknowledged that such a testing program was an opportunity for ECA development. The PFOA Plenary Group tasked the Fluoropolymer Technical Workgroup (a subgroup of the PFOA Plenary Group) with working out the details that could be incorporated into an ECA between the Companies and EPA.

On July 8, 2003, the Fluoropolymer Technical Workgroup received proposals from the Companies and EPA (Refs. 9 and 10) for incineration testing of FPs. Details of the testing program were then developed by members of the Fluoropolymer Incineration Subgroup (a subgroup of the Fluoropolymer Technical Workgroup) and the subgroup and workgroup reached consensus on the testing to be required under the ECA. On March 31, 2004, the Fluoropolymer Technical Workgroup acknowledged that this testing program had sufficient merit for consideration by the PFOA Plenary Group (Ref. 11). On April 1, 2004, the PFOA Plenary Group discussed the merit of this testing program and recommended that EPA consider entering into an ECA with the Companies (Ref. 12). EPA agreed and initiated steps to enter into this ECA with the Companies. On January 25, 2005, EPA received the ECA signed by the Companies, and on June 28, 2005, EPA signed the ECA and the Order that incorporates the ECA. The effective date of the ECA and the Order that incorporates the ECA is July 8, 2005.

EPA uses ECAs to accomplish testing of chemicals for health and environmental effects where a consensus exists concerning the need for and scope of testing (40 CFR 790.1(c)). The procedures for ECA negotiations and the factors for determining whether a consensus exists are described at 40 CFR 790.22 and 790.24, respectively.

B. What is the Subject of the ECA and Order Incorporating the ECA?

As specified under the ECA, four formulated composites of FP chemicals are the subject of and will be tested under the ECA and the Order that incorporates the ECA. Appendix A and Part XXIV. of the ECA (individual company signature pages) of the ECA provide details on: The rationale for formulating four composites that represent FP chemical products currently available in the marketplace, the identity of the FP chemicals used to formulate each composite, the procedures for formulating each composite, and the procedures by which each company will contribute the FP chemical(s) for which it is obligated under the terms of the ECA. The four formulated composites are identified as: Dry Non-Melt Resin (containing: Ethene, tetrafluoro-, homopolymer, CAS No. 9002–84–0, Polytetrafluoroethylene, Document Control Number (DCN) 63040000018A, and Propane, 1,1,1,2,2,3,3-heptafluoro-3-[(trifluoroethenyl)oxy]-, polymer with tetrafluoroethene, CAS No. 26655–00–5); Dry Melt Fluoropolymer Resin (containing: 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with tetrafluoroethene, CAS No. 25067–11–2; Propane, 1,1,1,2,2,3,3-heptafluoro-3-[(trifluoroethenyl)oxy]-, polymer with tetrafluoroethene, CAS No. 26655–00–5; Ethene, tetrafluoro-, polymer with trifluoro(pentafluoroethoxy)ethene, CAS No. 31784–04–0; 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with 1,1-difluoroethene and tetrafluoroethene, CAS No. 25190–89–0; ETFE, DCN 63040000026; and, 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with ethene and tetrafluoroethene, CAS No. 35560–16–8); Dry Non-Melt Fluoroelastomer Resin/Gum (containing: 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with 1,1-difluoroethene, CAS No. 9011–17–0; 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with 1,1- difluoroethene and tetrafluoroethene, CAS No. 25190–89–0; 1-Propene, polymer with 1,1-difluoroethene and tetrafluoroethene, CAS No. 54675–89–7; 1-Propene, polymer with tetrafluoroethene, CAS No. 27029–05–6; Ethene, tetrafluoro-, polymer with trifluoro(trifluoromethoxy) ethene, CAS No. 26425–79–6; Ethene, chlorotrifluoro-, polymer with 1,1-difluoroethene, CAS No. 9010–75–7; fluoroelastomer, DCN 63040000018C; fluoroelastomer DCN 63040000018D; and a low temperature fluoroelastomer, ACC 137678; and, Aqueous Fluoropolymer Dispersions (containing: Ethene, tetrafluoro-, homopolymer, CAS No. 9002–84–0; 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with tetrafluoroethene), CAS No. 25067–11–2; Propane, 1,1,1,2,2,3,3-heptafluoro-3-[(trifluoroethenyl)oxy]-, polymer with tetrafluoroethene, CAS No. 26655–00–5; 1-Propene, 1,1,2,3,3,3- hexafluoro-, polymer with 1,1-difluoroethene and tetrafluoroethene, CAS No. 25190–89–0; and polytetrafluoroethylene, DCN 63040000018B).

EPA uses a variety of numerical identification systems for tracking chemicals. These include CAS numbers assigned to non-confidential chemicals, premanufacture notice (PMN) numbers assigned by EPA when chemicals enter EPA's new chemical review process, document control numbers (DCN) assigned by the EPA OPPT's Confidential Business Information Center for EPA tracking, and Accession (ACC) numbers provided by EPA when a chemical identity listed on the TSCA Inventory has been claimed as TSCA CBI. In addition, chemicals that qualify for a reporting exemption under the Polymer Exemption Rule (40 CFR 723.250) may have a commercial trade identity or an IES Method I (CAS Inventory Expert Service) name assigned.

C. What Testing Does the ECA for FP Chemicals Require?

The ECA for laboratory-scale incineration testing of four composites of FP chemicals requires environmental testing, as described in Table 1 of this unit, which sets forth the required testing, test standards, and reporting requirements for testing to be conducted under the ECA.

The testing included in the ECA will be conducted in two segments, as follows: Phase I—PFOA Transport Testing (Phase I) and Phase II—Fluorotelomer Incineration Testing (Phase II). Phase I will consist of quantitative transport efficiency testing for PFOA. At the conclusion of Phase I, the Companies will provide EPA with a letter report summarizing the results. In the event that the transport efficiency of PFOA or total fluorine is equal to or greater than 70%, testing will proceed to Phase II. In the event that the transport efficiency of PFOA and total fluorine are both individually less than 70%, the Companies will initiate a technical consultation with EPA to reach agreement on how to proceed. The various outcomes of such a technical consultation are laid out in Part VIII. of the ECA.

Under Phase II, elemental analysis, combustion stoichiometry, thermogravimetric analysis, laboratory-scale combustion testing, and, if required under the ECA (see Table 1, footnote 9 of this unit), release assessment reporting will be performed for the four composites of FP chemicals that are the subject of the ECA.

TABLE 1.—REQUIRED TESTING, TEST STANDARDS, REPORTINGREQUIREMENTS: PHASES OF THE TESTING PROGRAM FOR THE INCINERATION OF FP COMPOSITES

Phase I		
PFOA Transport Testing	Test standard/Reporting requirements	Deadline [1] (Days)
Phase I Study Plan(s)	40 CFR 790.62 (b) as annotated by Part X. of the ECA	60 [3]
Phase I Quality Assurance Project Plan(s)	EPA Requirements for Quality Assurance Project Plans (QA/R5) [10]	90 [3]
Quantitative PFOA transport testing [2]	Appendix C.1. of the ECA	240 [4,5]
Phase II		
Fluoropolomer Incineration Testing	Test standard/Reporting requirements	Deadline [1] (Days)
Phase II Study Plan(s)	40 CFR 790.62 (b) as annotated by Part X. of the ECA	180 [3]
Phase II Quality Assurance Project Plan(s)	EPA Requirements for Quality Assurance Project Plans (QA/R5) [10]	360 [3]
Receipt of composite components by designated facility(ies)	Part XXIV. and Appendix A.3. of the ECA	180 [7]
Elemental Analysis [6]	Appendix C.2.1. of the ECA	450 [8]
Combustion Stoichiometry [6]	Appendix C.2.2. of the ECA	450 [8]
Thermogravimetric Analysis [6]	ASTM E1868-02, as modified in Appendix B.1. of the ECA	450 [8]
Laboratory-scale Combustion Testing [6]	Appendices C.2.4. and C.2.5., as annotated/supplemented by Appendices D.1., D.2., D.3., and D.4. of the ECA	450 [8]
Release Assessment Report	Appendix E.2. of the ECA	450 [9]

[1] Number of days, starting with the day following the event starting the time period in question. Interim progress reports must be submitted by the Companies to EPA every 180 days beginning 180 days from July 8, 2005, until the end of the ECA testing program (see Part XIV. and Appendix E.1. of the ECA).

[2] At the conclusion of Phase I, and prior to initiation of Phase II, the Companies will provide a letter report to EPA summarizing the results of Phase I testing (see Part VII.A. of the ECA). In the event that the transport efficiency of PFOA or of total fluorine (as determined by the formulas in Appendix C.1. of the ECA) is greater than or equal to 70%, then the Companies will proceed to Phase II. In the event that the transport efficiency of PFOA and of total fluorine (as determined by the formulas in Appendix C.1. of the ECA) are both individually less than 70% then the Companies will initiate a Technical Consultation with EPA. The outcomes of the Technical Consultation are described in Part VIII. of the ECA.

[3] Number of days after July 8, 2005, when submission is due.

[4] Number of days after EPA approval of the Study Plan(s) and QAPP(s) for Phase I testing when a letter report describing transport efficiency test result(s) and any contingency testing performed is due to EPA (see Part VII.A. and Appendix C.1.3. of the ECA). If the Study Plan(s) and QAPP(s) are not approved by EPA within 60 days of submission of the Phase I QAPP(s), then this deadline is extended by 180 days to accommodate re-scheduling with the thermal reactor system laboratory.

[5] The final report for Phase I will be submitted to EPA within 60 days of the completion of the Technical Consultation if the consultation does not result in an agreement to conduct further testing. If the Technical Consultation results in an agreement to conduct further testing, the final report for Phase I will be included in the final report for such further testing, unless agreed otherwise in the Technical Consultation (see Part VIII. of the ECA).

[6] The results of this testing will be provided in the final report for Phase II (see Appendix C.2.5. and Appendix E.3. of the ECA).

[7] Number of days from the submission of the Phase I letter report signifying that Phase II can proceed and the approval by EPA of the Phase II QAPP(s) that the Companies must meet their individual obligations to provide the designated facility(ies) with the components for each composite to be tested under the ECA (see Part III.B. of the ECA). If Phase II is required by Technical Consultation agreement (see footnote 2 of this table), the deadline shall be as agreed in the Technical Consultation.

[8] Number of days from the date of the final report from the ECA for the Laboratory-Scale Incineration Testing of Fluorotelomer-Based Polymers (published elsewhere in this FEDERAL REGISTER (EPA Docket ID number OPPT–2004–0001)) and the approval of study plan(s) and QAPP(s) for Phase II testing when this report is due, if all components of each composite are received, or EPA determines that testing shall proceed with a partial composite(s) (see Part III.B. of the ECA). An extension of the deadline for submitting the final report from the ECA for the Laboratory-Scale Incineration Tesing of Fluorotelomer-Based Polymers does not extend this deadline, unless expressly so provided.

[9] In the event that Phase II laboratory-scale incineration testing identifies measurable levels of PFOA resulting from the incineration testing for any or all of the fluoropolymer composites tested under the ECA, as defined in Appendix C.2.5.5. of the ECA, the Companies will prepare a Release Assessment Report to place in perspective the relevance of such measurable levels in the laboratory-scale incineration testing results with respect to full-scale municipal and/or medical waste incinerator operations in the United States. If required, the Release Assessment Report will be submitted in conjunction with the Final Report for Phase II testing (see footnotes 6 and 8 of this table).

[10] Guidance for developing Quality Assurance Project Plans can be found in the EPA document EPA QA/R-5: *EPA Requirements for Quality Assurance Project Plans*, prepared by: Office of Environmental Information, EPA, March 2001. This is also available from the EPA website at *http://epa.gov/quality/qs-docs.*

D. What are the Uses for the Test Data to be Developed Under the ECA?

EPA will use the data obtained from the testing to be conducted under the ECA to assess the potential for waste incineration of FPs to emit PFOA. This analysis will be based on quantitative determination of potential exhaust-gas levels of PFOA that may emanate from laboratory-scale combustion testing under conditions representative of typical municipal and/or medical waste

combustor operations in the United States. The data could provide EPA with an understanding of whether the incineration of FPs is a source and/or pathway for environmental and human exposure to PFOA.

These data could also be used to inform screening level human and environmental exposure assessments. In addition, the data could be used by other Federal Agencies (e.g., the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission (CPSC), and the Food and Drug Administration (FDA)) in assessing chemical risks and in taking appropriate actions within their programs.

IV. Other Impacts of the ECA

A. What if EPA Should Require Additional Environmental Testing on FP Chemicals?

If EPA decides in the future that it requires additional data on FPs, the Agency would initiate a separate action.

B. How Does the Order Affect TSCA Export Notification?

As of the effective date of the ECA and the Order that incorporates the ECA under TSCA section 4 (i.e., the date of publication of this document in the **Federal Register**) any of the Companies, as well as any other person, who exports or intends to export any of the four formulated composites of FP chemicals that are the subject of this ECA and Order that incorporates the ECA, in any form, are subject to the export notification requirements of TSCA section 12(b). Procedures related to export notification are described in 40 CFR part 707, subpart D. EPA maintains lists of all chemical substances and mixtures with CAS numbers (40 CFR 799.5000) and without CAS numbers (40 CFR 799.5025) that are subject to testing consent orders. This document will add the four formulated composites of FP chemicals that are the subject of this ECA and Order that incorporates the ECA to the list at 40 CFR 799.5025.

Notice and comment rulemaking is not needed to add these chemical substances to the list at 40 CFR 799.5025 because the export notification requirements are imposed by statute. Section 12(b) of TSCA requires any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 to submit a notification of the export or intended export to EPA. An ECA is an action under TSCA section 4 requiring the submission of data. 40 CFR 790.1. Accordingly, EPA's ECA regulations require that each ECA contain a statement that manufacturers or processors signing the ECA, as well as any other person, shall comply with export notification requirements in TSCA section 12(b). 40 CFR 790.60(a)(11). The four formulated composites of FP chemicals identified in this document are subject to an Order incorporating an ECA. EPA finds that notice and an opportunity for comment is unnecessary to implement the export notification requirements in TSCA section 12(b) for the reasons stated in this unit.

For chemical substances and mixtures subject to other Orders incorporating ECAs that were issued in the past, EPA initiated separate rulemakings to amend the lists at 40 CFR 799.5000 and 40 CFR 799.5025, thereby affording the public a comment opportunity as well as notifying the public of the existence of an ECA. EPA took this step to ensure that those companies not a party to the ECA or Order noticed their need to comply with TSCA section 12(b). However, EPA now believes that a separate rulemaking or an opportunity to comment on the implementation of the statutory mandate is not necessary.

C. What are the Economic Impacts of the ECA?

Based on the economic analysis conducted for the ECA, the Agency expects the cost of the testing to be performed under this ECA to range from $100,000 to $150,000. This estimate is based on a contact report of an inquiry directed to a university laboratory conducting thermal "burn" test research. The estimated total cost for industry to conduct the required testing under the ECA is $150,000, which is the upper end of the estimated cost range. EPA anticipates that the costs for testing under this ECA will have a low potential for adverse economic impact on the regulated community because the costs for testing will be shared across four companies who are signatories to the ECA and the Order that incorporates the ECA.

Export regulations promulgated pursuant to section 12(b) of TSCA—40 CFR part 707, subpart D—require only a one-time notification to each foreign country of export for each chemical for which data are required under section 4 of TSCA. In an analysis of the economic impacts of the July 27, 1993, amendment to the rules implementing section 12(b) of TSCA (58 FR 40238), EPA estimated that the one-time cost of preparing and submitting the TSCA section 12(b) notification for a first- time submitter of any TSCA section12(b) notification was $62.60 (Ref. 13). When inflated from 1992 to 2004 dollars (4thQ) by a factor of 1.538 using the Employment Cost Index for White Collar Occupations (Ref. 14), the current cost is estimated to be $96.12, or a burden of 1.5 hours, for a first-time submitter. An exporter who had previously submitted a 12(b) notification for any chemical/country combination would incur an estimated cost of $31.72 for preparing and submitting a TSCA section 12(b) notification, based on the burden estimate of .5 hours.

V. References

1. U.S. Environmental Protection Agency (EPA). Charles M. Auer. Memorandum to Oscar Hernandez, Mary Ellen Weber, and Ward Penberthy regarding revision of PFOA Hazard Assessment and Next Steps. September 27, 2002. Available from the EPA Administrative Record as AR 226–1127.

2. EPA. Draft Risk Assessment of the Potential Human Health Effects Associated with the Exposure to Perfluorooctanoic Acid and its Salts. January 4, 2005. p. 117. Available from EPA website, *http://www.epa.gov/oppt/pfoa/*.

3. EPA. Science Advisory Board (SAB) Staff Office; Notification of Upcoming Meetings of the Science Advisory Board Perfluorooctanoic Acid Risk Assessment (PFOA) Review Panel. **Federal Register** (70 FR 2157–2158, January 12, 2005) (FRL–7860–5).

4. 3M Company, Dr. Larry Wending. Letter of Intent to Stephen L. Johnson, USEPA, to continue ongoing environmental, health and safety measures by Company relating to Perfluorooctanoic Acid and its Salts (PFOA). March 13, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0007.

5. The Society of the Plastics Industry, Inc., Donald K. Duncan. The Ammonium Perfluorooctanoate (APFO) Users. Letters of Intent to Stephen L. Johnson, EPA, regarding responsive Voluntary Actions by parties to evaluate and control emissions of Ammonium Perfluorooctanoate (APFO). March 14, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0012.

6. Telomer Research Program (TRP) Member Companies. Letter of Intent to Stephen L. Johnson, EPA, regarding addressing concerns raised by EPA about the possible association of Perfluorooctanoic Acid (PFOA) with telomer-based products. March 14, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0013.

7. APFO Users, Telomer Companies, and The 3M Company. Letter of Intent to Stephen L. Johnson, USEPA, regarding commitment by Companies to assist the Environmental Protection Agency (EPA) in its investigation of Perfluorooctanoic Acid (PFOA) and Ammonium Perfluorooctanoate (APFO). March 31, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0016.

8. EPA. Preliminary Framework for Enforceable Consent Agreement (ECA) Data Development for PFOA and Telomers. May 20, 2003. Available from EPA EDOCKET as OPPT–2003–0012–0056.

9. Fluoropolymer Manufacturer's Group. Incineration Research Approach. Presentation to the Fluoropolymer Technical Workgroup. July 8, 2003. p. 3. Available from EPA EDOCKET as OPPT–2003–0071–0009.

10. EPA. EPA ECA Proposal for Fluoropolymer Incineration Testing. Presentation to the Fluoropolymer Technical Workgroup. July 8, 2003. p. 2. Available from EPA EDOCKET as OPPT–2003–0071–0009.

11. EPA. PFOA ECA Fluoropolymer Technical Workgroup Meeting Summary. March 31, 2004. p. 11. Available from EPA EDOCKET as OPPT–2003–0071–0103.

12. EPA. Enforceable Consent Agreement Development for Perfluorooctanoic Acid (PFOA) and Fluorinated Telomers. Public Meeting Summary. April 1, 2004. p. 6. Available from EPA EDOCKET as OPPT–2003–0071–0106.

13. EPA. *Economic Analysis in Support of the Final Rule Promulgated under TSCA Section 12(b).* William Silagi. EPA/OPPT/RIB. Washington, DC. June 1992.

14. Bureau of Labor Statistics (BLS). 2003. Employment Cost Index, Total Compensation: White-Collar Occupations (Series ID: ECS11102I), *http://data.bls.gov/cgi-bin/srgate*, extracted February 9, 2005.

15. EPA. Wendy Hoffman. Memorandum to Richard Leukroth regarding calculation of Paperwork Reduction Act burden estimate for the incineration ECAs. October 20, 2004. Available from EPA EDOCKET as OPPT–2003–0071–0007.

16. EPA. Lynne Blake-Hedges. Memorandum to EPAB Staff on Unit Burden Estimates for 12(b) Export Notification for Section 4 Test Rules and Enforceable Consent Agreements (ECAs). July 20, 1999.

17. ASTM. Standard Test Method for Loss-On Drying by Thermogravimetry. *2002 Annual Book of ASTM Standards.* Volume 14.02, Designated E 1868–02. pp. 635–638. August 10, 2002.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

This action announces an Order that incorporates an ECA between EPA and the Companies. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "regulatory action" subject to review by the Office of Management and Budget (OMB).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid control number assigned by OMB. The OMB control numbers for the EPA's regulations in title 40 of the CFR are listed in 40 CFR part 9.

The information collection requirements related to the Order that incorporates the ECA have already been approved by OMB pursuant to the PRA under OMB control number 2070–0033 (EPA ICR No. 1139). The one-time public burden for this collection of information is estimated to be approximately 433 hours per response (i.e., per company), or 1,732 hours total burden for the four companies (Ref. 15). Under the PRA, "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. For this collection, it includes the time needed to review instructions; complete and review the collection of information; and transmit or otherwise disclose the information.

The information collection requirements related to export notification requirements under section 12(b) of TSCA, including those related to the ECA and the Order that incorporates the ECA, have already been approved by OMB pursuant to PRA under OMB control number 2070–0030 (EPA ICR No. 0795). The public reporting burden for this information collection is estimated to be between .5 hours to 1.5 hours per response. The lower estimate applies to companies that have previously submitted a TSCA section 12(b) notification for any chemical or mixture, and therefore need only update an existing form letter assumed to have been generated electronically. The higher estimate applies to companies that are first-time submitters of a TSCA section 12(b) notification (Ref. 16), and therefore need to write an initial letter.

C. Regulatory Flexibility Act

Since the issuance of the ECA and the Order that incorporates the ECA, as well as the applicability of the export notification requirements of TSCA section 12(b) to chemicals addressed in the ECA and the Order that incorporates the ECA, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

D. Unfunded Mandates Reform Act

This action does not 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. Therefore, this action is not subject to the requirements of UMRA.

E. Executive Order 13132 and 13175

This action is not expected to impact State or Tribal governments because these governments are not expected to export the chemicals covered by the ECA or the Order that incorporates the ECA. As such, 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). Nor will this action have Tribal implications because it does not significantly or uniquely affect the communities of Indian Tribal governments, or involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply.

F. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 1985, April 23, 1997), does not apply to this action because this action is not designated as an "economically significant" regulatory action as defined by Executive Order 12866 (see Unit VI.A.), nor does this action establish an environmental standard that is intended to have a disproportionate effect on children. To the contrary, this action will provide data and information that EPA and others can use to assess the risks of these chemicals, including potential risks to sensitive subpopulations.

G. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

H. National Technology Transfer 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 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.

The testing conducted under the ECA involves technical standards. The Agency conducted a search to identify potentially applicable voluntary consensus standards. No such standard was identified for incineration testing of FP chemicals that are the subject of the ECA. However, EPA identified a voluntary consensus standard for thermogravimetric analysis (Ref. 17), which is a required element of the Phase II ECA testing. Appendix B.1. of the ECA describes specific modifications to this voluntary consensus standard that are needed to take into consideration the unique properties of FP chemicals.

Guideline No. (Year)	Guideline name	TSCA Guideline No.	OECD Guideline No.
ASTM E 1868-02 (August 10, 2002)	Standard Test Method for Loss-On-Drying by Thermo-gravimetry	None	None

I. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in Part 799

Environmental protection, Chemicals, Exports, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

Dated: June 28, 2005.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR Chapter I is amended as follows:

PART 799—[AMENDED]

■ 1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 2. Section 799.5025 is amended by adding the following entry to the table in alphabetical order, to read as follows:

§ 799.5025 Testing consent orders for mixtures without Chemical Abstracts Service Registry Numbers.

* * * * *

Mixture/substance	Required test	FR citation
* * * * *	* *	
Fluoropolymer composite substance:		
(1) For Dry Non-Melt Resin containing the following chemical substances as specified in the ECA:		
(i) Ethene, tetrafluoro-, homopolymer, CAS No. 9002–84–0	Environmental effects.	July 8, 2005.
(ii) Polytetrafluoroethylene, Document Control Number (DCN) 63040000018A	.....do	Do.
(iii) Propane, 1,1,1,2,2,3,3-heptafluoro-3-[(trifluoroethenyl)oxy]-, polymer with tetrafluoroethene, CAS No. 26655–00–5	.....do	Do.
(2) For Dry Melt Fluoropolymer Resin containing the following chemical substances as specified in the ECA:		
(i) 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with tetrafluoroethene, CAS No. 25067–11–2	.....do	Do.
(ii) Propane, 1,1,1,2,2,3,3-heptafluoro-3-[(trifluoroethenyl)oxy]-, polymer with tetrafluoroethene, CAS No. 26655–00–5	.....do	Do.
(iii) Ethene, tetrafluoro-, polymer with trifluoro(pentafluoroethoxy)ethene, CAS No. 31784–04–0	.....do	Do.
(iv) 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with 1,1-difluoroethene and tetrafluoroethene, CAS No. 25190–89–0	.....do	Do.
(v) ETFE, DCN 63040000026	.....do	Do.
(vi) 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with ethene and tetrafluoroethene, CAS No. 35560–16–8	.....do	Do.
(3) For Dry Non-Melt Fluoroelastomer Resin/Gum containing the following chemical substances as specified in the ECA:		
(i) 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with 1,1- difluoroethene, CAS No. 9011–17–0	.....do	Do.
(ii) 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with 1,1- difluoroethene and tetrafluoroethene, CAS No. 25190–89–0	.....do	Do.
(iii) 1-Propene, polymer with 1,1- difluoroethene and tetrafluoroethene, CAS No. 54675–89–7	.....do	Do.
(iv) 1-Propene, polymer with tetrafluoroethene, CAS No. 27029–05–6	.....do	Do.
(v) Ethene, tetrafluoro-, polymer with trifluoro(trifluoromethoxy) ethene, CAS No. 26425–79–6	.....do	Do.

Mixture/substance	Required test	FR citation
(vi) Ethene, chlorotrifluoro-, polymer with 1,1-difluoroethene, CAS No. 9010–75–7	.....do	Do.
(vii) Fluoroelastomer, DCN No. 63040000018C	.....do	Do.
(viii) Fluoroelastomer DCN 63040000018D	.....do	Do.
(ix) A low temperature fluoroelastomer, ACC No. 137678	.....do	Do.
(4) For Aqueous Fluoropolymer Dispersions containing the following chemical substances as specified in the ECA:		
(i) Ethene, tetrafluoro-, homopolymer, CAS No. 9002–84–0	.....do	Do.
(ii) 1-Propene, 1,1,2,3,3,3-hexafluoro-, polymer with tetrafluoroethene, CAS No. 25067–11–2	.....do	Do.
(iii) Propane, 1,1,1,2,2,3,3-heptafluoro-3- [(trifluoroethenyl)oxy]-, polymer with tetrafluoroethene, CAS No. 26655–00–5	.....do	Do.
(iv) 1-Propene, 1,1,2,3,3,3- hexafluoro-, polymer with 1,1-difluoroethene and tetrafluoroethene, CAS No. 25190–89–0	.....do	Do.
(v) Polytetrafluoroethylene, DCN No. 63040000018B	.....do	Do.
* * * * *	* *	

[FR Doc. 05–13493 Filed 7–7–05; 8:45 am]

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Friday, July 8, 2005

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FEDERAL REGISTER PAGES AND DATE, JULY

37985–38570	1
38571–38750	5
38751–39172	6
39173–39410	7
39411–39638	8

CFR PARTS AFFECTED DURING JULY

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

Executive Orders:
12735 (See EO 13382) 38567
12938 (Amended by EO 13382) 38567
13094 (See EO 13382) 38567
13382 38567
Administrative Orders:
Memorandums:
Memorandum of June 29, 2005 39173

7 CFR

4274 38571
Proposed Rules:
319 39194
868 39199
2902 38612

10 CFR

110 37985
625 39364

12 CFR

201 39411
Proposed Rules:
Ch. VII 39202

14 CFR

23 37994
36 38742
39 ..... 38573, 38575, 38578, 38580, 38751, 38753, 38755, 39412, 39559
71 ..... 37997, 38740, 39175
73 38740
91 38742
93 39610
Proposed Rules:
39 ..... 38625, 38627, 38630, 38632, 38636, 38817, 38819, 38821, 38823, 39204, 39433, 39435
71 ..... 38053, 38055, 38056, 38826

15 CFR

Proposed Rules:
303 38828

16 CFR

Proposed Rules:
23 38834

17 CFR

270 39390

18 CFR

35 38757

19 CFR

Proposed Rules:
101 38637
122 38637

20 CFR

404 38582

26 CFR

Proposed Rules:
1 38057
31 38057

27 CFR

9 ..... 37998, 38002, 38004
Proposed Rules:
4 38058

28 CFR

Proposed Rules:
45 39206

29 CFR

Proposed Rules:
1404 39209
1610 38060

30 CFR

Proposed Rules:
934 38639

31 CFR

Ch. V 38256

32 CFR

321 38009

33 CFR

100 38010
117 ..... 38593, 38594
165 ..... 38013, 38015, 39176
Proposed Rules:
167 38061

34 CFR

230 38017

36 CFR

7 38759

37 CFR

2 38768
7 38768
201 38022
251 38022
252 38022
257 38022
258 39178
259 38022

38 CFR

Proposed Rules:
3 39213

40 CFR

51.....39104, 39413
52.....38023, 38025, 38028, 38029, 38774, 38776
63.....38554, 38780, 39426
81.....38029
180.....38780, 38785, 38786
300.....38789, 39180
799.....39624, 39630

Proposed Rules:

52.....38064, 38068, 38071, 38073, 38837, 38839, 38840
55.....38840
63.....38554, 39441, 39457
81.....38073, 39215
194.....38642
300.....38845, 39217

41 CFR

Proposed Rules:

51-2.....38080
51-3.....38080
51-4.....38080

42 CFR

414.....39022

Proposed Rules:

1001.....38081

44 CFR

64.....38038

Proposed Rules:

67.....39457

45 CFR

2510.....39562
2520.....39562
2521.....39562
2522.....39562
2540.....39562
2550.....39562

47 CFR

1.....38794, 38795
15.....38800
20.....38794
43.....38794
63.....38795
64.....38795
73.....39182

Proposed Rules:

15.....38845
73.....39217
76.....38848

49 CFR

209.....38804
213.....38804
214.....38804
215.....38804
216.....38804
217.....38804
218.....38804
219.....38804
220.....38804
221.....38804
222.....38804
223.....38804
225.....38804
228.....38804
229.....38804
230.....38804
231.....38804
232.....38804
233.....38804
234.....38804
235.....38804
236.....38804
238.....38804
239.....38804
240.....38804
241.....38804
244.....38804
571.....38040
573.....38805
577.....38805

50 CFR

622.....39187
648.....39190, 39192
660.....38596
679.....38052, 38815

Proposed Rules:

17.....38849, 39227
223.....38861, 39231
224.....39231

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 JULY 8, 2005

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Vermilion snapper; published 6-8-05

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Construction contracts; labor standards; published 6-8-05
Deferred compensation and postretirement benefits other than pensions; published 6-8-05
Gains and losses, maintenance and repair costs, and material costs; published 6-8-05
SDB and HUBZone price evaluation factor; applicability; published 6-8-05

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Georgia; published 5-9-05
Toxic substances:
Fluoropolymer chemicals; enforceable consent agreement and testing consent order; published 7-8-05
Fluorotelomer-based polymer chemicals; enforceable consent agreement and testing consent order; published 7-8-05

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Satellite communications—
Satellite licensing procedures; published 6-8-05

FEDERAL RESERVE SYSTEM
Extension of credit by Federal Reserve Banks (Regulation A):
Bank primary credit rate increase; published 7-8-05

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Construction contracts; labor standards; published 6-8-05
Deferred compensation and postretirement benefits other than pensions; published 6-8-05
Gains and losses, maintenance and repair costs, and material costs; published 6-8-05
SDB and HUBZone price evaluation factor; applicability; published 6-8-05

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New York; published 6-30-05

HOMELAND SECURITY DEPARTMENT
Transportation Security Administration
Privacy Act; implementation; published 6-8-05

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Government National Mortgage Association (Ginnie Mae):
Mortgage-backed securities guaranty; minimum face value of securities; regulation removed; published 6-8-05

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Construction contracts; labor standards; published 6-8-05
Deferred compensation and postretirement benefits. other than pensions; published 6-8-05
Gains and losses, maintenance and repair costs, and material costs; published 6-8-05

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Revo, Inc.; published 6-10-05
Sikorsky; published 6-23-05
Airworthiness standards:
Special conditions—
Boeing Model 747SP airplane; published 6-8-05

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Civil monetary penalties; inflation adjustment; published 6-8-05

RULES GOING INTO EFFECT JULY 10, 2005

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Mentor Harbor, OH; published 6-28-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Kiwifruit grown in—
California; comments due by 7-12-05; published 6-22-05 [FR 05-12254]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Meat and meat product exportation to United States; eligible countries; addition—
Chile; comments due by 7-11-05; published 5-10-05 [FR 05-09279]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT
International Trade Administration
Worsted wool fabric imports; tariff rate quota implementation; comments due by 7-15-05; published 5-16-05 [FR 05-09494]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish; comments due by 7-15-05; published 7-6-05 [FR 05-13260]
Atlantic highly migratory species—
Atlantic shark; comments due by 7-11-05; published 5-10-05 [FR 05-09332]
Caribbean, Gulf, and South Atlantic fisheries—
Red snapper; comments due by 7-11-05; published 5-12-05 [FR 05-09517]
South Atlantic shrimp; comments due by 7-11-05; published 5-27-05 [FR 05-10671]
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish; comments due by 7-11-05; published 6-9-05 [FR 05-11462]
Haddock; comments due by 7-13-05; published 6-13-05 [FR 05-11593]
International fisheries regulations:
Pacific halibut—
Catch sharing plan; comments due by 7-11-05; published 6-24-05 [FR 05-12585]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Acquisition regulations:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program;

Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

Bombardier; comments due by 7-14-05; published 6-14-05 [FR 05-11709]

Cirrus Design Corp.; comments due by 7-14-05; published 6-9-05 [FR 05-11456]

McDonnell Douglas; comments due by 7-11-05; published 6-14-05 [FR 05-11710]

Pilatus Aircraft Ltd.; comments due by 7-13-05; published 6-14-05 [FR 05-11703]

Airworthiness standards:

Special conditions—

Boeing Model 737-200/200C/300/400/500/600/700/700C/800/900 series airplanes; comments due by 7-15-05; published 6-15-05 [FR 05-11762]

Tiger AG-5B airplane; comments due by 7-14-05; published 6-14-05 [FR 05-11669]

Transport category airplanes—

Front row passenger seats; acceptable methods of compliance; comments due by 7-11-05; published 6-9-05 [FR 05-11410]

Area navigation routes; comments due by 7-11-05; published 5-25-05 [FR 05-10413]

Class E airspace; comments due by 7-11-05; published 5-25-05 [FR 05-10374]

VOR Federal airways; comments due by 7-11-05; published 5-25-05 [FR 05-10376]

Correction; comments due by 7-11-05; published 5-25-05 [FR 05-10414]

TREASURY DEPARTMENT

Comptroller of the Currency

Fair credit reporting medical information regulations; comments due by 7-11-05; published 6-10-05 [FR 05-11356]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes

Foreign entities; classification; comments due by 7-13-05; published 4-14-05 [FR 05-06855]

Practice and procedure:

Residence and source rules; comments due by 7-11-05; published 4-11-05 [FR 05-07088]

TREASURY DEPARTMENT

Thrift Supervision Office

Fair credit reporting medical information regulations; comments due by 7-11-05; published 6-10-05 [FR 05-11356]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Rights and responsibilities of claimants and beneficiaries; plain language rewrite; comments due by 7-11-05; published 5-10-05 [FR 05-09230]

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H.R. 483/P.L. 109–16

To designate a United States courthouse in Brownsville, Texas, as the "Reynaldo G. Garza and Filemon B. Vela United States Courthouse". (June 29, 2005; 119 Stat. 338)

S. 643/P.L. 109–17

To amend the Agricultural Credit Act of 1987 to reauthorize State mediation programs. (June 29, 2005; 119 Stat. 339)

H.R. 1812/P.L. 109–18

Patient Navigator Outreach and Chronic Disease Prevention Act of 2005 (June 29, 2005; 119 Stat. 340)

H.R. 3021/P.L. 109–19

TANF Extension Act of 2005 (July 1, 2005; 119 Stat. 344)

H.R. 3104/P.L. 109–20

Surface Transportation Extension Act of 2005, Part II (July 1, 2005; 119 Stat. 346)

Last List July 5, 2005

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109th Congress

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